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F. Under the old English criminal law, this letter was branded upon felons upon their being admitted to clergy; as also upon those convicted of fights or frays, or falsity.

Federal Reporter, First Series. *See* Federal Reporter.

F.2d. Federal Reporter, Second Series. *See* Federal Reporter.

F.A.A. *See* Federal Aviation Administration. In maritime insurance means: "Free of all average", denoting that the insurance is against total loss only.

Fabrica /fæbrækə/. In old English law, the making or coining of money.

Fabricare /fæbrækəriy/. Lat. To make. Used in old English law of a lawful coining, and also of an unlawful making or counterfeiting of coin. Used in an indictment for forging a bill of lading.

Fabricate. To invent; to devise falsely. *See also* Counterfeit; Forgery.

Fabricated evidence. Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent. To fabricate evidence is to arrange or manufacture circumstances or *indicia*, after the fact committed, with the purpose of using them as evidence, and of deceitfully making them appear as if accidental or undesigned. To devise falsely or contrive by artifice with the intention to deceive. Such evidence may be wholly forged and artificial, or it may consist in so warping and distorting real facts as to create an erroneous impression in the minds of those who observe them and then presenting such impression as true and genuine. *See also* Fabricated fact; Perjury.

Fabricated fact. In the law of evidence, a fact existing only in statement, without any foundation in truth. An actual or genuine fact to which a false appearance has been designedly given; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion. *See also* Deceit; False fact; Fraud; Perjury.

Fabric lands. In old English law, lands given towards the maintenance, rebuilding, or repairing of cathedral and other churches.

Fabula /fæbyələ/. In old European law, a contract or formal agreement; particularly used in the Lombardic and Visigothic laws to denote a marriage contract or a will.

Face. The surface of anything, especially the front, upper, or outer part or surface. That which particularly offers itself to the view of a spectator. The words of a written paper in their apparent or obvious meaning, as, the face of a note, bill, bond, check, draft, judgment record, or contract. The face of a judgment for which it was rendered exclusive of interest. *Cunningham v. Great Southern Life Ins. Co.*, Tex.Civ.App., 66 S.W.2d 765, 773.

Face amount. The face amount of an instrument is that shown by the mere language employed, and excludes any accrued interest. *See* Face of instrument; Face value.

Face amount insured by the policy. Within statute relating to extended life insurance, means the amount which is, in all events, payable under the policy as straight life insurance without regard to additional features such as accident or disability insurance. *Wilkins v. Metropolitan Life Ins. Co.*, 350 Mo. 185, 165 S.W.2d 858, 861, 862. *See also* Face of policy; Face value.

Face of instrument. That which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts or evidence. *Investors' Syndicate v. Willcuts*, D.C.Minn., 45 F.2d 900, 902. Thus, if the express terms of the paper disclose a fatal legal defect, it is said to be "void on its face." Regarded as an evidence of debt, the face of an instrument is the principal sum which it expresses to be due or payable, without any additions in the way of interest or costs. *See also* Face value.

Face of judgment. The sum for which it was rendered, exclusive of interest.

Face of policy. A phrase which, as used in a statute forbidding life insurance policies to contain provision for any mode of settlement at maturity of less value than the amount insured on the "face of the policy," does not mean merely the first page, but denotes the entire insurance contract contained in the policy, including a rider attached and referred to on the first page. *See also* Face value.

Face of record. The entire record in a case, not merely what the judgment recites. Every part of trial proceedings reserved in courts of record under direction of court for purpose of its records. *Permian Oil Co. v. Smith*, 129 Tex. 413, 107 S.W.2d 564, 566. The "face of the record" means, in a criminal case, the indictment and the verdict. *See also* Record.

Facere /féysəriy/. Lat. To do; to make. Thus, *facere defaultam*, to make default; *facere duellum*, to make the duel, or make or do battle; *facere finem*, to make or pay a fine; *facere legem*, to make one's law; *facere sacramentum*, to make oath.

Face value. The value of an insurance policy, bond, note, mortgage, or other security, as given on the certificate or instrument, payable upon maturity of the instrument. The face value is also the amount on which interest or coupon payments are calculated. Thus, a 10% bond with face value of \$1000 pays bondholders \$100 per year. Face value is also often referred to as the par value or nominal value of the instrument. The value which can be ascertained from the language of the instrument without aid from extrinsic facts or evidence. *Investors' Syndicate v. Willcuts*, D.C.Min., 45 F.2d 900, 902. See also Face amount. Compare Market value.

Facial disfigurement. That which impairs or injures the beauty, symmetry, or appearance of a person. That which renders unsightly, misshapen or imperfect or deforms in some manner. *Ferguson v. State Highway Department*, 197 S.C. 520, 15 S.E.2d 775, 778.

Facias /féys(h)i(y)əs/. That you cause.

Occurring in the phrases "*scire facias*" (that you cause to know), "*fieri facias*" (that you cause to be made), etc. Used also in the phrases *Do ut facias* (I give that you may do), *Facio ut facias* (I do that you may do), two of the four divisions of considerations made by Blackstone, 2 Comm. 444. See *Facio ut des*; *Facio ut facias*.

Facie. See *Facies*.

Faciendo /féys(h)i(y)éndow/. In doing or paying; in some activity.

Facies /féys(h)i(y)iz/. Lat. The face or countenance; the exterior appearance or view; hence, contemplation or study of a thing on its external or apparent side. Thus, *prima facie* means at the first inspection, on a preliminary or exterior scrutiny. When we speak of a "*prima facie* case," we mean one which, on its own showing, on a first examination, or without investigating any alleged defenses, is apparently good and maintainable.

Facilitate. To free from difficulty or impediment. *Pon Wing Quong v. United States*, C.C.A.Cal., 111 F.2d 751, 756. Within statute prohibiting use of facilities of interstate commerce with intent to promote, manage, facilitate, or carry on unlawful activity means to make easy or less difficult. *U.S. v. Judkins*, C.A.Tenn., 428 F.2d 333, 335. See also *Facilitation*; *Facilities*.

Facilitation. In criminal law, the act of making it easier for another to commit crime; e.g. changing of cars to evade police officer who has suspect under surveillance and thus to enable a clandestine transfer of contraband to take place would constitute "facilitation" within forfeiture statute. *U. S. v. One (1) Chevrolet Corvette Auto. Serial No. 194371S121113*, C.A.Fla., 496 F.2d 210, 212. See also *Accomplice*; *Aid and abet*.

Facilities. That which promotes the ease of any action, operation, transaction, or course of conduct. The term normally denotes inanimate means rather than human agencies, though it may also include animate beings such as persons, people and groups thereof. *Cheney v. Tolliver*, 234 Ark. 973, 356 S.W.2d 636, 638.

A name formerly given to certain notes of some of the banks in the state of Connecticut, which were made payable in two years after the close of the war of 1812. *Springfield Bank v. Merrick*, 14 Mass. 322.

Facility. Something that is built or installed to perform some particular function, but it also means something that promotes the ease of any action or course of conduct. *Raynor v. American Heritage Life Ins. Co.*, 123 Ga.App. 247, 180 S.E.2d 248, 250. See also *Facilities*.

Facility of payment clause. Provision in insurance policy providing for appointment by insured and beneficiary of persons authorized to receive payment. *Downey v. Downey*, 1 Conn.App. 489, 472 A.2d 1296, 1298. It confers on insurer an option as to whom it will make payment. *Metropolitan Life Ins. Co. v. Brown for Use and Benefit of Fleming*, 25 Tenn.App. 514, 160 S.W.2d 434, 438.

Facinus quos inquinat æquat /fæsənəs kwòws ɪŋkwənət ɪkwət/. Guilt makes equal those whom it stains.

Facio ut des /féys(h)i(y)ow àt dɪz/. Lat. I do that you may give. A species of contract in the civil law (being one of the *innominate* contracts) which occurs when a man agrees to perform anything for a price either specifically mentioned or left to the determination of the law to set a value on it; as when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl.Comm. 445. Also, the consideration of that species of contract.

Facio ut facias /féys(h)i(y)ow àt féys(h)i(y)əs/. Lat. I do that you may do. The consideration of that species of contract in the civil law, or the contract itself (being one of the *innominate* contracts), which occurs when I agree with a man to do his work for him if he will do mine for me; or if two persons agree to marry together, or to do any other positive acts on both sides; or it may be to forbear on one side in consideration of something done on the other. 2 Bl.Comm. 444.

Facsimile /fæksíməliy/. An exact copy, preserving all the marks of the original.

Facsimile signature. One which has been prepared and reproduced by some mechanical or photographic process. Many states have adopted the Uniform Facsimile Signatures of Public Officials Act.

Fact. A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time or space or an event mental or physical; that which has taken place. *City of South Euclid v. Clapacs*, 6 Ohio Misc. 101, 213 N.E.2d 828, 832. A fact is either a state of things, that is, an existence, or a motion, that is, an event. The quality of being actual; actual existence or occurrence.

Evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it usually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion. A truth, as distinguished from fiction or error. "Fact" means reality of events or things the actual occurrence or existence of which is to be determined by evidence. *Peoples v. Peoples*, 10 N.C.App. 402, 179 S.E.2d 138, 141. Under Rule of Civil Procedure 41(b), providing for motion for dismissal at close of plaintiff's evidence in nonjury case on ground that upon the facts and the law plaintiff has shown no right to relief, the "facts" referred to are the prima facie facts shown by plaintiff's evidence viewed in light most favorable to him. *Schad v. Twentieth Century-Fox Film Corporation*, C.C.A.Pa., 136 F.2d 991, 993.

Fact and law distinguished. "Fact" is very frequently used in opposition or contrast to "law". Thus, questions of fact are for the jury; questions of law for the court. *E.g.* fraud in fact consists in an actual intention to defraud, carried into effect; while fraud imputed by law arises from the person's conduct in its necessary relations and consequences. A "fact", as distinguished from the "law", may be taken as that out of which the point of law arises, that which is asserted to be or not to be, and is to be presumed or proved to be or not to be for the purpose of applying or refusing to apply a rule of law. *Hinckley v. Town of Barnstable*, 311 Mass. 600, 42 N.E.2d 581, 584. Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. See *E.g.* Fact question.

See also Adjudicative facts; Collateral facts; Dispositive facts; Evidentiary facts; Fabricated fact; Fact question; Finding (*Finding of fact*); Material fact; Principal (*Principal fact*); Ultimate facts.

Facta /fáktə/. In old English law, deeds. *Facta armorum*, deeds or feats of arms; that is, jousts or tournaments.

Facta sunt potentiora verbis /fáktə sànt pətènsihyòrə vərbə/. Deeds [or facts] are more powerful than words.

Facta tenent multa quæ fieri prohibentur /fáktə ténànt mólta kwíy fáyrày pròwhábéntər/. Deeds contain many things which are prohibited to be done.

Fact finder. Person or persons appointed by business, government, or by court to investigate, hear testimony from witnesses, or otherwise determine and report facts concerning a particular event, situation, or dispute (*e.g.*, jury; administrative hearing officer). See also Trier of fact.

Fact finding board. A group or committee appointed by business, labor organization, government, or similar body to investigate and report facts concerning some event or situation.

Factio testamenti /fáksh(i)yow tètstáméntay/. In the civil law, the right, power, or capacity of making a will; called "*factio activa*."

The right or capacity of taking by will; called "*factio passiva*."

Fact material to risk. See Material fact.

Facto /fáktow/. In fact; by an act; by the act or fact. *Ipsa facto*, by the act itself; by the mere effect of a fact, without anything superadded, or any proceeding upon it to give it effect.

Facto et animo /fáktow èt ànəməw/. In fact and intent.

Factor. At common law, a commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being entrusted with the possession and control of the goods, and being remunerated by a commission, commonly called "factorage." A commercial agent to whom the possession of personalty is entrusted by or for the owner, to be sold, for a compensation, in pursuance of the agent's usual trade or business, with title to goods remaining in principal and the "factor" being merely a bailee for the purposes of the agency. *Neild v. District of Columbia*, 71 App.D.C. 306, 110 F.2d 246, 259.

A firm (typically a finance company) that purchases a firm's receivables at a discount and is responsible for processing and collecting the balances of these accounts. Financier who generally lends money and takes in return an assignment of accounts receivable or some other security. In *re Freeman*, C.A.N.J., 294 F.2d 126, 129, 131. See Factoring.

See also Commission merchant; Jobber.

Any circumstance or influence which brings about or contributes to a result such as a factor of production.

Broker and factor distinguished. A factor differs from a "broker" in that he is entrusted with the possession, management, and control of the goods (which gives him a special property in them); while a broker acts as a mere intermediary without control or possession of the property. A factor may buy and sell in his own name, as well as in that of the principal, while a broker, as such, cannot ordinarily buy or sell in his own name.

Factorage /fákt(a)rəj/. The wages, allowance, or commission paid to a factor for his services. The business of a factor.

Factoring. Sale of accounts receivable of a firm to a factor at a discounted price. The purchase of accounts receivable from a business by a factor who thereby assumes the risk of loss in return for some agreed discount. *Manhattan Factoring Corp. v. Orsburn*, 238 Ark. 947, 385 S.W.2d 785, 790. See Factor.

Factorizing process. A process by which the effects of a debtor are attached in the hands of a third person. More commonly termed "trustee process", "garnishment", and process by "foreign attachment".

Factors' acts. The name given to several English statutes (6 Geo. IV, c. 94; 5 & 6 Vict., c. 39; 40 & 41 Vict., c. 39) by which a factor was enabled to make a valid pledge of the goods, or of any part thereof, to one who believed

him to be the *bona fide* owner of the goods. Similar legislation is not uncommon in the United States.

Factor's lien. The right (usually provided by statute) of a factor to keep possession of his principal's merchandise until the latter has settled his account with him.

Factory acts. Laws enacted for the purpose of regulating the hours of work, and the health and safety conditions. See e.g. Fair Labor Standards Act; Occupational Safety and Health Act; Wage and hour laws.

Factory prices. The prices at which goods may be bought at the factories, as distinguished from the prices of goods bought in the market after they have passed into the hands of wholesalers or retailers.

Fact question. Those issues in a trial or hearing which concern facts or events and whether such occurred and how they occurred as contrasted with issues and questions of law. Fact questions are for the jury, unless the issues are presented at a bench trial, while law questions are decided by the judge. Fact questions and their findings are generally not appealable though rulings of law are subject to appeal.

Facts. See Fact.

Facts incomplete. A certificate of trial judge to bill of exceptions not certifying to correctness of any recital therein and only certifying that the bill is "facts incomplete", that is, not finished, not perfect, defective, verifies nothing and brings nothing before the Court of Appeals for review. *Loving v. Kamm*, Ohio App., 34 N.E.2d 591.

Facts in issue. Those matters of fact on which the plaintiff proceeds by his action, and which the defendant controverts in his defense. Under civil rule practice in the federal courts, and in most state courts, the facts alleged in the initial complaint are usually quite brief, with the development of additional facts being left to discovery and pretrial conference.

Factum /fæktəm/. A fact, event, deed, act, doing. A statement of facts.

Civil law. Fact; a fact; a matter of fact, as distinguished from a matter of law.

French law. A memoir which contains concisely set down the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party.

Old English law. A deed; a person's act and deed. A culpable or criminal act; an act not founded in law. Anything stated or made certain; a deed of conveyance; a written instrument under seal: called, also, *charta*. 2 Bl.Comm. 295. A fact; a circumstance; particularly a fact in evidence. *Factum probandum* (the fact to be proved).

Old European law. A portion or allotment of land; otherwise called a hide, *bovata*, etc.

Testamentary law. The execution or due execution of a will. The *factum* of an instrument means not merely the signing of it, and the formal publication or delivery,

but proof that the party well knew and understood the contents thereof, and did give, will, dispose, and do, in all things, as in the said will is contained. *Weatherhead's Lessee v. Baskerville*, 52 U.S. (11 How.) 329, 13 L.Ed. 717.

Factum a iudice quod ad ejus officium non spectat non ratum est /fæktəm əy juwdəsiy, kwöd æd iyjəs əfɪʃ(i)yəm nɒn spɛktət, nɒn rɛytəm ɛst/. An action of a judge which relates not to his office is of no force.

Factum cuique suum non adversario, nocere debet /fæktəm k(yuw)əykwiy s(y)uwm nɒn ədvɜrsəriyow, nɔsəriy dɛbət/. A party's own act should prejudice himself, not his adversary.

Factum infectum fieri nequit /fæktəm ənfɛktəm fəyərəy nɛkwət/. A thing done cannot be undone.

Factum juridicum /fæktəm jɜridɪkəm/. A juridical fact. Denotes one of the factors or elements constituting an obligation.

Factum negantis nulla probatio sit /fæktəm nɛgəntəs nɔlə prəbɛyʃh(i)yow sit/. There is no proof incumbent upon him who denies a fact.

"Factum" non dicitur quod non perseverat /fæktəm nɒn dɪsətɜ kwöd nɒn pɜrsɜvɪrət/. That is not called a "deed" which does not continue operative. That is not said to be done which does not last.

Factum probandum /fæktəm prɒbændəm/. Lat. In the law of evidence, the fact to be proved; a fact which is in issue, and to which evidence is to be directed.

Factum probans /fæktəm prɒwbændz/. A probative or evidentiary fact; a subsidiary or connected fact tending to prove the principal fact in issue; a piece of circumstantial evidence.

Factum unius alteri noceri non debet /fæktəm yənáyəs ɔltərəy nəsɪriy nɒn dɛbət/. The deed of one should not hurt another.

Facultas probationum non est angustanda /fækəltəs prəbɛyʃhiyɔwnəm nɒn ɛst æŋgəstændə/. The power of proofs [right of offering or giving testimony] is not to be narrowed.

Facultative compensation /fækəltɛytəv kɒmpən-sɛyʃən/. That which operates by the will of the parties, when one of them removes an obstacle preventing compensation, resulting from the dispositions of the law.

Facultative reinsurance /fækəltɛytəv riʃənsʃərəns/. Under type designated "facultative", the reinsurer has the option of accepting the tendered part of the original insurer's risk. *Lincoln Nat. Life Ins. Co. v. State Tax Commission*, 196 Miss. 82, 16 So.2d 369.

Faculties /fækəltiɪz/. Abilities; powers; capabilities. In the law of divorce, the capability of the husband to render a support to the wife in the form of alimony, whether temporary or permanent, including not only his tangible property, but also his income and his ability to earn money. See Allegation of faculties.

Faculties, Court of. In English ecclesiastical law, a jurisdiction or tribunal belonging to the archbishop. It

does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various powers under 25 Hen. VIII, c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a church-yard, to remove bodies previously buried. Faculties are also granted by Consistory Courts.

Faculties, Master of the. An official in the archdiocese of Canterbury who is head of the Court of Faculties. *See* Arches Court.

Faculty. Ability; power; capability. Teaching staff of school. *See also* Faculties.

Faderfium /fáðærfiyəm/. In old English law, a marriage gift coming from the father or brother of the bride.

Fade the game. Means that spectators of a game of "craps" bet on the success of actual participants. *Sullivan v. State*, 146 Tex.Cr.R. 79, 171 S.W.2d 353.

Fæder-feoh /fæðærfiy/. In old English law, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; *i.e.*, it reverted to her family in case she returned to them.

Fæsting-men /fæstiŋmèn/. Approved men who were strong-armed; *habentes homines* or rich men, men of substance; pledges or bondsmen, who, by Saxon custom, were bound to answer for each other's good behavior.

Faggot. A badge worn in early times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited.

Faggot vote. A term applied in England to votes manufactured by nominally transferring land to persons otherwise disqualified from voting for members of parliament. A faggot vote occurred where a man was formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he was enabled to buy a property, and at the same moment mortgage it to its full value, for the mere sake of the vote.

Faida /fáyðə/. In Saxon law, malice; open and deadly hostility; deadly feud. The word designated the enmity between the family of a murdered man and that of his murderer, which was recognized, among the Teutonic peoples, as justification for vengeance taken by any one of the former upon any one of the latter.

Fail. Fault, negligence, or refusal. Fall short; be unsuccessful or deficient. Fading health. *See* Extremis.

Fail also means: involuntarily to fall short of success or the attainment of one's purpose; to become insolvent and unable to meet one's obligations as they mature; to become or be found deficient or wanting; to keep or cease from an appointed, proper, expected, or required action, *Romero v. Department of Public Works*, 17 Cal.2d 189, 109 P.2d 662, 665; to lapse, as a legacy which has never vested or taken effect; to leave unperformed; to omit; to neglect; to be wanting in action. *See also* Failure; Lapse.

Failing circumstances. Insolvency, that is, the lack of sufficient assets to pay one's debts as they become due. A person (or a corporation or institution) is said to be in failing circumstances when he is about to fail, that is, when he is actually insolvent and is acting in contemplation of giving up his business because he is unable to carry it on.

A bank is in "failing circumstances" when, from any cause, it is unable to pay its debts in the ordinary or usual course of business, *Sanders v. Owens*, Mo.App., 47 S.W.2d 132, 134; when it is in a state of uncertainty as to whether it will be able to sustain itself, depending on favorable or unfavorable contingencies, over which its officers have no control. *Graf v. Allen*, 230 Mo.App. 721, 74 S.W.2d 61, 66. *See also* Bankruptcy; Failure to meet obligations.

Failing company. Doctrine which makes the Clayton Act section on the acquisition of a competitor's assets inapplicable to the acquisition of a competitor which is in such financial straits that termination of the enterprise seems inevitable. *Erie Sand & Gravel Co. v. F.T.C., C.A.*, 291 F.2d 279, 280. In order for this doctrine to be applicable, to permit a corporate merger or acquisition otherwise proscribed under the Clayton Act, it must be demonstrated that the failing company was bankrupt or on the brink of bankruptcy. *U.S. v. Reed Roller Bit Co.*, D.C.Okl., 274 F.Supp. 573, 584.

Failite /faiyt/. In French law, bankruptcy; failure; the situation of a debtor who finds himself unable to fulfill his engagements.

Failure. Abandonment or defeat. Failure of duty or obligation. Lapse. Deficiency, want, or lack; ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt. *See also* Fail; Lapse.

Failure of consideration. As applied to notes, contracts, conveyances, etc., this term does not necessarily mean a want of consideration, but implies that a consideration, originally existing and good, has since become worthless or has ceased to exist or been extinguished, partially or entirely. It means that sufficient consideration was contemplated by the parties at time contract was entered into, but either on account of some innate defect in the thing to be given or nonperformance in whole or in part of that which the promisee agreed to do or forbear nothing of value can be or is received by the promisee. *Holcomb v. Long Beach Inv. Co.*, 129 Cal. App. 285, 19 P.2d 31, 36. Such consists of neglect, refusal, or failure of one of the parties to perform or furnish agreed-upon consideration. *Royal Typewriter Co., a Div. of Litton Business Systems, Inc. v. Xerographic Supplies Corp.*, C.A.Fla., 719 F.2d 1092, 1107.

Failure of evidence. *See* Failure of proof.

Failure of good behavior. As enumerated in statute as ground for removal of a civil service employee, means behavior contrary to recognized standards of propriety and morality, misconduct or wrong conduct. *State ex rel. Ashbaugh v. Bahr*, 68 Ohio App. 308, 40 N.E.2d 677, 680, 682.

Failure of issue. Dying without children. The failure at a fixed time, or the total extinction, of issue to take an estate limited over by an executory devise. A definite failure of issue is when a precise time is fixed by the will for the failure of issue, as in the case where there is a devise to one, but if he dies without issue or lawful issue living at the time of his death, etc. An indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. *See also* Dying without issue.

Failure of justice. The defeat of a particular right, or the failure of reparation for a particular wrong, from the lack or inadequacy of a legal remedy for the enforcement of the one or the redress of the other. The term is also colloquially applied to the miscarriage of justice which occurs when the result of a trial is so palpably wrong as to shock the moral sense. *See also* Miscarriage of justice.

Failure of proof. Inability or failure to prove the cause of action or defense in its entire scope and meaning. *Breslin-Griffitt Carpet Co. v. Asadorian*, Mo.App., 145 S.W.2d 494, 496. Where evidence is such as would support either of two contradictory inferences, or presumptions, respecting the ultimate facts, there is a "failure of proof". *Muesenfechter v. St. Louis Car Co.*, Mo.App., 139 S.W.2d 1102, 1106. *See* Directed verdict; Failure to state cause of action; Non obstante veredicto; Summary judgment.

Failure of record. Failure of the defendant to produce a record which he has alleged and relied on in his plea.

Failure of title. The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell. *See also* Cloud on title; Curing title; Marketable title.

Failure of trust. The lapsing or nonefficiency of a proposed trust, by reason of the defect or insufficiency of the deed or instrument creating it, or on account of illegality, indefiniteness, or other legal impediment.

Failure otherwise than upon merits. Phrase imports some action by court by which plaintiff is defeated without a trial upon the merits; *e.g.* judgment on pleadings, summary judgment.

Failure to bargain collectively. An employer's refusal to discuss with union, as employees' bargaining agency, questions involving conditions of employment and interpretation of contract constitutes a "failure to bargain collectively" with union. *Rapid Roller Co. v. National Labor Relations Board*, C.C.A.7, 126 F.2d 452, 459.

Failure to make delivery. Misdelivery or nondelivery. This phrase is fully adequate to cover all cases where delivery has not been made as required. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*, 241 U.S. 190, 36 S.Ct. 541, 543, 60 L.Ed. 948.

Failure to meet obligations. Inability or failure to pay debts as due. For example, bank's failure to pay depositors on demand constitutes "failure to meet obligations"

in most cases. Where bank closed its doors and ceased to transact business or make transfers of capital stock, and thereafter ordinary deposits could not be drawn out and checks in process of collection were dishonored, returned unpaid, was "failure to meet obligations". *State of Ohio ex rel. Squire v. Union Trust Co. of Pittsburgh*, 137 Pa.Super. 75, 8 A.2d 476, 480. *See also* Bankruptcy; Failing circumstances; Insolvency.

Failure to perform. As regards reciprocal promises, allegation of defendant's "failure to perform" when demanded is equivalent to allegation of "refusal to perform," unless performance by plaintiff is condition precedent to cause of action. *Brooks v. Scoville*, 81 Utah 163, 17 P.2d 218, 220.

Failure to state cause of action. Failure of the plaintiff to allege sufficient facts in the complaint to maintain action. In other words, even if the plaintiff proved all the facts alleged in the complaint, the facts would not establish a cause of action entitling the plaintiff to recover against the defendant. The motion to dismiss for failure to state a cause of action is sometimes referred to as (a) a demurrer (*e.g.* California) or (b) a failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b). *See also* Directed verdict; Summary judgment.

Failure to testify. In a criminal trial, defendant is not required to testify and such failure may not be commented on by judge or prosecution because of protection of Fifth Amendment, U.S.Const. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106. *See also* Self-incrimination.

Faint (or feigned) action. In old English practice, an action was so called where the party bringing it had no title to recover, although the words of the writ were true. *See also* Feigned action.

Faint pleader. A fraudulent, false, or collusive manner of pleading to the deception of a third person.

Fair. Having the qualities of impartiality and honesty; free from prejudice, favoritism, and self-interest. Just; equitable; even-handed; equal, as between conflicting interests. *See also* Equitable; Reasonable.

A gathering of buyers and sellers for purposes of exhibiting and sale of goods; usually accompanied by amusements, contests, entertainment, and the like.

In England, a greater species of market; a privileged market. It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown. A public mart or place of buying or selling. 1 Bl.Comm. 274. In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and nonlegal, and transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

Fair and impartial jury. Jury chosen to hear evidence and render verdict without any fixed opinion concerning the guilt, innocence or liability of defendant. Means that every member of the jury must be a fair and impartial juror. *City of San Antonio v. McKenzie Const. Co.*, 136 Tex. 315, 150 S.W.2d 989, 993. Denotes jurors who are not only fair and impartial, but also qualified. *Boca Teeca Corp. v. Palm Beach County*, Fla.App., 291 So.2d 110, 111. *See* Fair and impartial trial; Impartial jury.

Fair and impartial trial. A hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial consideration of evidence and facts as a whole. A basic constitutional guarantee contained implicitly in the Due Process Clause of Fourteenth Amendment, U.S. Constitution.

One where accused's legal rights are safeguarded and respected. *Raney v. Commonwealth*, 287 Ky. 492, 153 S.W.2d 935, 937, 938. A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in the light of all prevailing circumstances to investigate, properly prepare, and present the defense. One wherein defendant is permitted to be represented by counsel and neither witnesses nor counsel are intimidated. One wherein no undue advantage is taken by the district attorney or any one else. *People v. Nationwide News Service*, 172 Misc. 752, 16 N.Y.S.2d 277, 279. One wherein witnesses of litigants are permitted to testify under rules of court within proper bounds of judicial discretion, and under law governing testimony of witnesses with right in parties to testify, if qualified, and of counsel to be heard. It requires that the jury chosen to sit in judgment shall have no fixed opinion concerning the guilt or innocence of one on trial. *Lane v. Warden*, Md. Penitentiary, C.A.Md., 320 F.2d 179, 185. There must not only be fair and impartial jury, and learned and upright judge, but there should be atmosphere of calm in which witnesses can deliver their testimony without fear and intimidation, in which attorneys can assert accused's rights freely and fully, and in which the truth may be received and given credence without fear of violence. *Raney v. Commonwealth*, 287 Ky. 492, 153 S.W.2d 935, 937, 938. *See also* Impartial jury.

Fair and proper legal assessment. Such as places the value of property on a fair, equal, and uniform basis with other property of like character and value throughout the county and state. *See also* Equalization.

Fair and reasonable value. *See* Fair market value; Fair value; Just compensation.

Fair and valuable consideration. One which is a substantial compensation for the property conveyed, or which is reasonable, in view of the surrounding circumstances and conditions and market value of comparable properties in same vicinity, in contradistinction to an inadequate consideration. *Lucas v. Coker*, 189 Okl. 95, 113 P.2d 589, 590. *See also* Adequate Consideration; Fair

consideration; Fair market value; Fair value; Just compensation.

Fair averaging. In tax assessment, means average, typical of amount and price of goods acquired over twelve month period. *Sears Roebuck & Co. v. State Tax Commission*, 214 Md. 550, 136 A.2d 567.

Fair cash market value. Terms "cash market value", "fair market value", "reasonable market value" or "fair cash market value" are substantially synonymous. *Fort Worth & D. N. Ry. Co. v. Sugg*, Tex.Civ.App., 68 S.W.2d 570, 572.

Fair cash value. The phrase is practically synonymous with "reasonable value," "fair market value," and "actual cash value," meaning the fair or reasonable cash price for which the property can be sold on the market. Fair cash value for property tax purposes is interpreted as meaning "fair market value" or price that property would bring at a sale where both parties are willing, ready and able to do business and under no duress to do so. *Consolidation Coal Co. v. Property Tax Appeal Bd. of Dept. of Local Government Affairs*, 29 Ill.App.3d 465, 331 N.E.2d 122, 126. The price which someone will pay for it in open market. *See also* Fair market value; Fair value; Just compensation.

Fair comment. A form of qualified privilege applied to news media publications relating to discussion of matters which are of legitimate concern to the community as a whole because they materially affect the interests of all the community. *Phoenix Newspapers, Inc. v. Church*, 103 Ariz. 582, 447 P.2d 840, 853. A term used in the defense of libel actions, applying to statements made by a writer (e.g., news media) in an honest belief of their truth, relating to official acts, even though the statements are not true in fact.

Defense of "fair comment" is not destroyed by circumstance that jury may believe that the comment is logically unsound, but it suffices that a reasonable person may honestly entertain such opinion, on facts found. *Cohalan v. New York Tribune*, 172 Misc. 20, 15 N.Y.S.2d 58, 60, 61. Fair comment must be based on facts truly stated, must not contain imputations of corrupt or dishonorable motives except as warranted by the facts, and must be honest expression of writer's real opinion. *Hall v. Binghamton Press Co.*, 263 App.Div. 403, 33 N.Y.S.2d 840, 848. *See also* Fairness or equal time doctrine.

Fair competition. Open, equitable, just competition, which is fair as between competitors and as between any of them and his customers. *See* Antitrust acts; Clayton Act; Price-fixing; Sherman Antitrust Act.

Fair consideration. A fair equivalent. One which, under all the circumstances, is honest, reasonable, and free from suspicion. Full and adequate consideration. Good-faith satisfaction of an antecedent debt. One which fairly represents the value of the property transferred. One which is not disproportionate to the value of the property conveyed. A term of fraudulent conveyance law describing whatever is given in exchange for a conveyance of debtor's property whenever the exchange involves property or other things having substantially

equivalent values. *See also* Adequate consideration; Fair cash value; Fair market value; Fair value; Just compensation.

Fair Credit Billing Act. Federal Act designed to facilitate settlement of billing error disputes and to make credit card companies more responsible for the quality of merchandise purchased by cardholders. 15 U.S.C.A. § 1666 et seq.

Fair Credit Reporting Acts. *Federal Act.* This law represents the first Federal regulation of the vast consumer reporting industry, covering all credit bureaus, investigative reporting companies, detective and collection agencies, lenders' exchanges, and computerized information reporting companies. The purpose of this Act is to insure that consumer reporting activities are conducted in a manner that is fair and equitable to the affected consumer, upholding his right to privacy as against the informational demands of others. The consumer is given several important rights, including the right to notice of reporting activities, the right to access to information contained in consumer reports, and the right to correction of erroneous information that may have been the basis for a denial of credit, insurance, or employment. 15 U.S.C.A. § 1681 et seq. *See also* Consumer reporting agency.

State Acts. Typical state acts cover consumer's rights against credit investigatory agencies; prohibit reporting of obsolete information; require that person giving credit disclose to consumer that report is being obtained, and require reporting agency to make copy available to consumer.

Fair Debt Collection Practices Act. Federal act, the purpose of which is to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. This act also applies to debt collection practices of attorneys. 15 U.S.C.A. § 1692(e). Most states also have statutes regulating debt collection practices.

Fair equivalent. As used in statute providing that fair consideration is given for property exchanged at fair equivalent means value at time of conveyance. "Equivalent" means equal in worth or value; "fair" means equitable as a basis for exchange; reasonable; a fair value.

Fair hearing. One in which authority is fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law. Contemplated in a fair hearing is the right to present evidence, to cross examine, and to have findings supported by evidence. *See e.g.* APA, 5 U.S.C.A. § 556.

Statutes and regulations establish procedures to assure fair hearings for various types of administrative proceedings. For example, fair hearing of an alien's right to enter the United States means a hearing before the immigration officers in accordance with the funda-

mental principles that inhere in due process of law, and implies that alien shall not only have a fair opportunity to present evidence in his favor, but shall be apprised of the evidence against him, so that at the conclusion of the hearing he may be in a position to know all of the evidence on which the matter is to be decided; it being not enough that the immigration officials meant to be fair.

See also Fair and impartial trial.

Fair knowledge or skill. A reasonable degree of knowledge or measure of skill.

Fair Labor Standards Act. Federal Act (1938) which set a minimum standard wage (periodically increased by later statutes) and a maximum work week of 40 hours in industries engaged in interstate commerce. Such Act also regulates hours of work, and type of work, that can be performed by teen-agers. The Act created the Wage and Hour Division in the Department of Labor. 29 U.S.C.A. § 201 et seq. *See also* Child labor laws; Minimum wage; Wage and hour laws.

Fairly. Equitably, honestly, impartially, reasonably. *Looney v. Elliott*, Tex.Civ.App., 52 S.W.2d 949, 952. Justly; rightly. With substantial correctness. "Fairly merchantable" conveys the idea of mediocrity in quality, or something just above it. *See also* Equitable; Fair.

Fair market price. *See* Fair market value.

Fair market value. The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser. *State, by Commissioner of Transp. v. Cooper Alloy Corp.*, 136 N.J.Super. 560, 347 A.2d 365, 368. Fair market value is the price that the asset would bring by bona fide bargaining between well-informed buyers and sellers at the date of acquisition. Usually the fair market price will be the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition. The amount of money which purchaser who is willing but not obligated to buy would pay owner who is willing but not obligated to sell, taking into consideration all uses to which the land is adapted and might in reason be applied. *Arkansas State Highway Commission v. DeLaughter*, 250 Ark. 990, 468 S.W.2d 242, 247.

Synonymous or identical terms are: Actual cash value, *Stiles v. Commissioner of Internal Revenue*, C.C.A. Fla., 69 F.2d 951, 952; actual value, *Appeals of Matson*, 152 Pa.Super. 424, 33 A.2d 464, 465; cash market value, *West Texas Hotel Co. v. City of El Paso*, Tex.Civ.App., 83 S.W.2d 772, 775; fair cash market value, *Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co.*, 243 Ala. 157, 8 So.2d 835, 837; fair cash

value, Commissioner of Corporations and Taxation v. Boston Edison Co., 310 Mass. 674, 39 N.E.2d 584, 593; market value, Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572; United States v. 3969.59 Acres of Land, D.C.Idaho, 56 F.Supp. 831, 837; reasonable market value, Housing Authority of Birmingham Dist. v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So.2d 835, 837; true cash value, Appeals of Matson, 152 Pa.Super. 424, 33 A.2d 464, 465.

See also Fair value.

Fairness or equal time doctrine. This doctrine imposes affirmative responsibilities on the broadcaster to provide coverage of issues of public importance which is adequate and which fairly reflects differing viewpoints. In fulfilling its "Fairness Doctrine" obligations, broadcaster must provide free time for the presentation of opposing views if a paid sponsor is unavailable and must initiate programming on public issues if no one else seeks to do so. Columbia Broadcasting System, Inc. v. Democratic National Committee, Dist.Col., 412 U.S. 94, 93 S.Ct. 2080, 2089, 36 L.Ed.2d 772. Refers to section of Federal Communications Act which provides that major advocates of both sides of political and public issues should be given fair or equal opportunity to broadcast their viewpoints. 47 U.S.C.A. § 315. *See also* Equal Time Act.

Fair on its face. A tax deed "fair on its face," is one which cannot be shown to be illegal without extraneous evidence. Denny v. Stevens, 52 Wyo. 253, 73 P.2d 308, 310. A process fair on its face does not mean that it must appear to be perfectly regular or in all respects in accord with proper practice and after the most approved form, but that it shall apparently be process lawfully issued and such as the officer may lawfully serve, and a process is fair on its face which proceeds from a court, magistrate, or body having authority of law to issue process of that nature and which is legal in form and on its face contains nothing to notify or fairly apprise the officer that it is issued without authority.

Fair persuasion. Argument, exhortation, or entreaty addressed to a person without threat of physical harm or economic loss, or persistent molestation or harassment or material and fraudulent misrepresentations. City of Reno v. Second Judicial District Court in and for Washoe County, 59 Nev. 416, 95 P.2d 994, 998.

Fair play. Equity, justice and decency in dealings with another. *See* Equity.

Fair pleader. *See* Beapleader.

Fair preponderance of evidence. Evidence sufficient to create in the minds of the triers of fact the conviction that the party upon whom is the burden has established its case. The greater and weightier evidence; the more convincing evidence. Belmont Hotel v. New Jersey Title Guaranty & Trust Co., 22 N.J.Misc. 261, 37 A.2d 681, 682. Such a superiority of evidence on one side that the fact of its outweighing the evidence on the other side can be perceived if the whole evidence is fairly considered. Such evidence as when weighed with that which is offered to oppose it, has more convincing power in the minds of the jury. The term conveys the idea of

something more than a preponderance. The term is not a technical term, but simply means that evidence which outweighs that which is offered to oppose it, and does not necessarily mean the greater number of witnesses. *See also* Preponderance of evidence.

Fair rate of return. Amount of profits that a public utility is permitted to earn as determined by public utility commissions. Such is based on the need of the utility to maintain service to customers, finance expenditures for improvements and expansion, pay dividends to shareholders, etc. *See also* Fair return on investment.

Fair representation. Refers to the duty of a union to represent fairly all its members, both in the conduct of collective bargaining and in the enforcement of the resulting agreement, and to serve the interests of all members without hostility or discrimination toward any and to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct. Buzzard v. Local Lodge 1040 International Ass'n of Machinists and Aerospace Workers, C.A.Wash., 480 F.2d 35, 40.

Fair return on investment. A "fair return" is to be largely measured by usual returns in like investments in the same vicinity over the same period of time. Natural Gas Pipeline Co. of America v. Federal Power Commission, C.C.A.Ill., 120 F.2d 625, 633, 634. Reasonable profit on sale or holding of investment assets. A fair return on value of property used and useful in carrying on the enterprise, performing the service or supplying the thing for which the rates are paid. Lubin v. Finkelstein, 82 N.Y.S.2d 329, 335. Term is generally used in reference to setting of rates for public utilities. *See also* Fair rate of return.

Fair sale. In foreclosure and other judicial proceedings, this means a sale conducted with fairness and impartiality as respects the rights and interests of the parties affected. A sale at a price sufficient to warrant confirmation or approval when it is required.

Fair trade laws. State statutes which permit manufacturers or distributors of namebrand goods to fix minimum retail prices. Following a series of court decisions striking down such statutes, Congress in 1976 repealed such statutes.

Fair trial. *See* Fair and impartial trial.

Fair use doctrine. A privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without the owner's consent, notwithstanding the monopoly granted to the owner. To determine whether fair use has been made of copyrighted material, the nature and objects of the selections made, the quantity and value of material used and extent to which the use may diminish the value of the original work must be considered. Rosemont Enterprises, Inc. v. Random House, Inc., D.C.N.Y., 256 F.Supp. 55, 65, 66.

Fair use involves a balancing process by which a complex of variables determine whether other interests should override the rights of creators. The Copyright Act explicitly identifies four interests: (1) the purpose

and character of the use, including its commercial nature; (2) the nature of the copyrighted work; (3) the proportion that was "taken"; and (4) the economic impact of the "taking." 17 U.S.C.A. § 107.

Fair value. Present market value; such sum as the property will sell for to a purchaser desiring to buy, the owner wishing to sell; such a price as a capable and diligent business man could presently obtain from the property after conferring with those accustomed to buy such property; the amount the property would bring at a sale on execution shown to have been in all respects fair and reasonable; the fair market value of the property as between one who wants to purchase and one who wants to sell the property. Where no definite market value can be established and expert testimony must be relied on, fair valuation is the amount which the property ought to give to a going concern as a fair return, if sold to some one who is willing to purchase under ordinary selling conditions. In determining "fair valuation" of property, court should consider all elements entering into the intrinsic value, as well as the selling value, and also the earning power of the property. In re Gibson Hotels, D.C.W.Va., 24 F.Supp. 859, 863. In determining depreciation, "fair value" implies consideration of all factors material in negotiating sale and purchase of property, such as wear, decay, deterioration, obsolescence, inadequacy, and redundancy. Idaho Power Co. v. Thompson, D.C.Idaho, 19 F.2d 547, 566. Price which a seller, willing but not compelled to sell, would take, and a purchaser, willing but not compelled to buy, would pay. Price which buyers of the class which would be interested in buying property would be justified in paying for it. In re Crane's Estate, 344 Pa. 141, 23 A.2d 851, 855.

Within provision of business corporation act for determination of fair value of dissenting stockholder's shares, "fair value" means intrinsic value. Santee Oil Co., Inc. v. Cox, 265 S.C. 270, 217 S.E.2d 789, 793. Among elements to be considered in arriving at "fair value" or "fair cash value" of stock of a stockholder who dissents from a sale of corporate assets are its market value, net asset value, investment value, and earning capacity. Lucas v. Pembroke Water Co., 205 Va. 84, 135 S.E.2d 147, 150.

"Actual value," "market value," "fair value," and the like, are commonly used as convertible terms. See also Fair market value.

Fait /féyt/. L. Fr. Anything done. A deed; act; fact. A deed lawfully executed.

Fait accompli. Fact or deed accomplished, presumably irreversible.

Fait enrole /féyt ònról/. A deed enrolled, as a bargain and sale of freeholds.

Faith. Confidence; credit; reliance. Thus, an act may be said to be done "on the faith" of certain representations.

Belief; credence; trust. Thus, the Constitution provides that "full faith and credit" shall be given to the judgments of each state in the courts of the others.

Purpose; intent; sincerity; state of knowledge or design. This is the meaning of the word in the phrases "good faith" and "bad faith." See Good faith.

Faithful. Honest; loyal; trustworthy; reliable; allegiant; conscientious. Wright v. Fidelity & Deposit Co. of Maryland, 176 Okl. 274, 54 P.2d 1084, 1087. As used in the rule that executors must be "faithful," means that they must act in good faith. In re McCafferty's Will, 147 Misc. 179, 264 N.Y.S. 38. See also Good faith.

Faithfully. Conscientious diligence or faithfulness in meeting obligations, or just regard of adherence to duty, or due observance of undertaking of contract. Commonwealth v. Polk, 256 Ky. 100, 75 S.W.2d 761, 765. Diligently, and without unnecessary delay. Truthfully, sincerely, accurately.

As used in bonds of public and private officers, this term imports not only honesty, but also a punctilious discharge of all the duties of the office, requiring competence, diligence, and attention, without any malfeasance or nonfeasance, aside from mere mistakes.

Fait juridique /féy zhyùridiyk/. In French law, a juridical fact. One of the factors or elements constitutive of an obligation.

Faitours /féytàrz/. Idle persons; idle livers; vagabonds.

Fake. To make or construct falsely. A "faked alibi" is a made, manufactured, or false alibi. Something that is not what it purports to be; counterfeit. An imposter. See Counterfeit; Forgery.

Faker. A swindler; an imposter.

Fakir /féykír/féykær/. A term applied among the Mohammedans to a kind of religious ascetic or beggar, whose claim is that he "is in need of mercy, and poor in the sight of God, rather than in need of worldly assistance."

Sometimes spelled *faqueer* or *fakeer*. It is commonly used to designate a person engaged in some useless or dishonest business. Fake is also so used and also to designate the quality of such business. A street peddler who disposes of worthless wares, or of any goods above their value, by means of any false representation, trick, device, lottery, or game of chance.

Falcarious. See Falsarius (or falcarious).

Falcidia /fòlsídiyò/fàl'/. In Spanish law, the Falcidian portion; the portion of an inheritance which could not be legally bequeathed away from the heir, viz., one-fourth.

Falcidian law /fòlsídiyàn ló/fàl'/. In Roman law, a law on the subject of testamentary disposition. It was enacted by the people during the reign of Augustus, in the year of Rome 714, on the proposition of the tribune Falcidius. By this law, the testator's right to burden his estate with legacies was subjected to an important restriction. It prescribed that no one could bequeath more than three-fourths of his property in legacies, and that the heir should have at least one-fourth of the estate, and that, should the testator violate this prescript, the

heir may have the right to make a proportional deduction from each legatee, so far as necessary.

A similar principle exists in Louisiana. See *Legitime*. In some of the states the statutes authorizing bequests and devises to charitable corporations limit the amount which a testator may give, to a certain fraction of his estate.

Falcidian portion /fòlsídiyən pórshən/fæl°. That portion of a testator's estate which, by the Falcidian law, was required to be left to the heir, amounting to at least one-fourth. See also *Legitime*.

Faldworth. In Saxon law, a person reckoned old enough to become a member of the decennary, and so subject to the law of frank-pledge.

Falk-land. See *Folc-land*.

Fall. One of the four seasons of the year, embracing, in the Northern Hemisphere, the three months commencing with the 21st of September and terminating with the 20th of December. Autumn.

To come within limits, scope, or jurisdiction of something. To decrease in value. To recede, as a depression or recession in the economy.

Fallo /fá(lyow/. In Spanish law, the final decree or judgment given in a controversy at law.

Fallow /fálow/. Barren or unproductive. *May v. American Trust Co.*, 135 Cal.App. 385, 27 P.2d 101. Not pregnant.

Fallow-land. Land plowed, but not sown, and left uncultivated for a time after successive crops. Land tilled, but left unseeded during the growing season.

Fallum. In old English law, an unexplained term for some particular kind of land.

Falsa demonstratio /fòlsə dèmənstreysh(iy)ow/. In the civil law, false designation; erroneous description of a person or thing in a written instrument.

Falsa demonstratione legatum non perimi /fòlsə dèmənstreyshiyówniy ləgétəm nòn péhrəmay/. A bequest is not rendered void by an erroneous description.

Falsa demonstratio non nocet, cum de corpore (persona) constat /fòlsə dèmənstreysh(iy)ow nòn nòsət, kəm diy kórpariy (pársównə) kónstət/. False description does not injure or vitiate, provided the thing or person intended has once been sufficiently described. Mere false description does not make an instrument inoperative.

Falsa grammatica non vitiat concessionem /fòlsə grəmätəkə nòn vishiyət kónsès(hiyównəm/. False or bad grammar does not vitiate a grant. Neither false Latin nor false English will make a deed void when the intent of the parties doth plainly appear.

Falsa moneta /fòlsə məniytə/. In the civil law, false or counterfeit money.

Falsa orthographia non vitiat chartam, concessionem /fòlsə órthəgráfiyə nòn vishiyət kártəm, *kónsès(hiyównəm/. False spelling does not vitiate a deed.

Falsare /fòlséry/. In old English law, to counterfeit. *Quia falsavit sigillum*, because he counterfeited the seal.

Falsarius (or falcarius) /fòlséryəs/. A counterfeiter.

False. Not true. Term also means: artificial; counterfeit; assumed or designed to deceive, *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 352; contrary to fact, *In re Davis*, 349 Pa. 651, 37 A.2d 498, 499; deceitful; deliberately and knowingly false, *People v. Mangan*, 140 Misc. 783, 252 N.Y.S. 44, 52; designedly untrue, *W. T. Rawleigh Co. v. Brantley*, 97 Miss. 244, 19 So.2d 808, 811; erroneous, *Gilbert v. Inter-Ocean Casualty Co. of Cincinnati*, Ohio, 41 N.M. 463, 71 P.2d 56, 59; hypocritical; sham; feigned, incorrect, *State v. Arnett*, 338 Mo. 907, 92 S.W.2d 897, 900; intentionally untrue, *Com. v. Kraatz*, 2 Mass.App.Ct. 196, 310 N.E.2d 368, 376; not according to truth or reality, *State v. Arnett*, 338 Mo. 907, 92 S.W.2d 897, 900; not genuine or real; uttering falsehood; unvarnished; given to deceit; dishonest, *Wilensky v. Goodyear Tire & Rubber Co.*, C.C.A. Mass., 67 F.2d 389, 390; wilfully and intentionally untrue, *In re Brown*, D.C.N.Y., 37 F.Supp. 526, 527; *North American Accident Ins. Co. v. Tebbs*, C.C.A.Utah, 107 F.2d 853, 855.

The word "false" has two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care. *Metropolitan Life Ins. Co. v. Adams*, D.C.Mun.App., 37 A.2d 345, 350. A thing is called "false" when it is done, or made, with knowledge, actual or constructive, that it is untrue or illegal, or is said to be done falsely when the meaning is that the party is in fault for its error. A statement (including a statement in a claim or document), is "false" if it was untrue by the person making it, or causing it to be made.

See also *Alteration*; *Bogus*; *Counterfeit*; *Falsely*; *False representation*; *Falsify*; *Forgery*; *Fraud*; *Misrepresentation*; *Perjury*.

False action. See *Feigned action*.

False and fraudulent. To amount to actionable "false and fraudulent representations", they must have been as to existing fact or known by one making them, from his superior knowledge, to have been untrue when made. *Burlison v. Weis*, Mo.App., 152 S.W.2d 201, 203. See *False representation*; *Fraud*.

False answer. In pleading, a sham answer; one which is false in the sense of being a mere pretense set up in bad faith and without color of fact. Such answer may be ordered stricken on motion. Fed.R. Civil P. 12(f).

False arrest. A species of false imprisonment, consisting of the detention of a person without his or her consent and without lawful authority. *Reams v. City of Tucson*, App., 145 Ariz. 340, 701 P.2d 598, 601. Such arrest consists in unlawful restraint of an individual's personal liberty or freedom of locomotion. *Johnson v. Jackson*, 43 Ill.App.2d 251, 193 N.E.2d 485, 489. An arrest without proper legal authority is a false arrest and because an arrest restrains the liberty of a person it is also false

imprisonment. The gist of the tort is protection of the personal interest in freedom from restraint of movement. Neither ill will nor malice are elements of the tort, but if these elements are shown, punitive damages may be awarded in addition to compensatory or nominal damages. *See also* Imprisonment (*False imprisonment*); Malicious prosecution.

False character. In England, the offense of personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant.

False checks. Offense of obtaining money by means and use of a check upon a bank, in which the drawer at the time had no funds or credit with which to meet the same, and which he had no reason to believe would honor such check upon presentation at said bank for payment. *See also* Kiting.

False claim. A statement or a claim which is not true.

False Claims Act. Federal act providing for civil and criminal penalties against individuals who knowingly present or cause to be presented to the government a false claim or bill, or deliver less property to the government than what is billed for, or make or use a false record to decrease an obligation to the government. The statute provides for enforcement of its provisions either by the U.S. Attorney General or in "qui tam" actions by private persons. 18 U.S.C.A. §§ 286, 287; 31 U.S.C.A. §§ 3729-3733. *See also* Qui tam action.

Falsedad /falsəyóád/. In Spanish law, falsity; an alteration of the truth; deception; fraud.

False decretals. A collection of canon law, dated about the middle of the 9th century, probably by a Frankish ecclesiastic who called himself Isadon. It continued to be the chief repertory of the canon law till the 15th century when its untrustworthy nature was demonstrated.

False demonstration. An erroneous description of a person or thing in a written instrument. Where description of person or thing in will is partly true and partly false, if part which is true describes subject or object of gift with sufficient certainty, untrue part may be rejected and gift sustained, under doctrine of "false demonstration." In *re Heins' Estate*, 132 Cal.App. 131, 22 P.2d 549.

False entry. An untrue statement of items of account by written words, figures, or marks. One making an original false entry makes a false entry in every book which is made up in regular course from the entry or entries from the original book of entry.

An entry in books of a bank or trust company which is intentionally made to represent what is not true or does not exist, with intent either to deceive its officers or a bank examiner or to defraud the bank or trust company. *Agnew v. U. S.*, 165 U.S. 36, 17 S.Ct. 235, 41 L.Ed. 624.

False fact. In the law of evidence, a feigned, simulated, or fabricated fact; a fact not founded in truth, but

existing only in assertion; the deceitful semblance of a fact. *See* Fabricated fact; Perjury.

Falsehood. A statement or assertion known to be untrue, and intended to deceive. A willful act or declaration contrary to the truth. It is committed either by the willful act of the party, or by dissimulation, or by words. A fabrication. *Werner v. Southern Cal. Associated Newspapers*, Cal.App., 206 P.2d 952, 961. *See* Perjury.

False impersonation. The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability. To impersonate another falsely, and in such assumed character to do any act whereby any benefit might accrue to the offender or to another person. *People v. Horkans*, 109 Colo. 177, 123 P.2d 824. *See also* Impersonation; Personate.

False implication libel. Type of libel action by public figure against news media alleging that news article created a false impression or implication even though each statement, taken separately, was true. *Price v. Viking Penguin*, 881 F.2d 1426, 1432.

False imprisonment. *See* False arrest; Imprisonment; Probable cause.

False instrument. A counterfeit; one made in the similitude of a genuine instrument and purporting on its face to be such. *See also* Counterfeit; False making; Forgery.

False judgment. In old English law, a writ which lay when a false judgment had been pronounced in a court not of record, as a county court, court baron, etc.

In old French law, the defeated party in a suit had the privilege of accusing the judges of pronouncing a false or corrupt judgment, whereupon the issue was determined by his challenging them to the combat or *duellum*. This was called the "appeal of false judgment."

False Latin. When law proceedings were written in Latin, if a word were significant though not good Latin, then an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole void.

False light privacy. Where a privacy action is brought against the media because a report has been published that is false, the privacy plaintiff will be required to show, if the report was newsworthy, that the publication was made with actual malice. *Time, Inc. v. Hill*, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed.2d 456.

False lights and signals. Lights and signals falsely and maliciously displayed for the purpose of bringing a vessel into danger.

Falsely. In a false manner, erroneously, not truly, perfidiously or treacherously. *Dombroski v. Metropolitan Life Ins. Co.*, 126 N.J.L. 545, 19 A.2d 678, 680. Knowingly affirming without probable cause.

The word "falsely", particularly in a criminal statute, suggests something more than a mere untruth and includes perfidiously or treacherously or with intent to defraud. *United States v. Achtner, C.C.A.N.Y.*, 144 F.2d 49, 52. Commonly used in the sense of designedly untrue and deceitful, and as implying an intention to perpetrate some treachery or fraud. As applied to making or altering a writing in order to make it forgery, implies that the paper or writing is not genuine; that in itself it is false or counterfeit.

See also Counterfeit; False; Forgery.

False making. An essential element of forgery, where material alteration is not involved. Term has reference to manner in which writing is made or executed rather than to its substance or effect. A falsely made instrument is one that is fictitious, not genuine, or in some material particular something other than it purports to be and without regard to truth or falsity of facts stated therein. *Wright v. U. S., C.A.Ariz.*, 172 F.2d 310, 311. *See also* Counterfeit; Forgery.

False misrepresentation. *See* False representation.

False news. Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, seems to have been a misdemeanor, under St. 3 Edw. I, c. 34.

False oath. To defeat discharge in bankruptcy "false oath" must contain all the elements involved in "perjury" at common law, namely, an intentional untruth in matter material to a material issue. It must have been knowingly and fraudulently made. *In re Stone, D.C. N.H.*, 52 F.2d 639, 641. *See also* False swearing; Perjury.

False personation. *See* False impersonation.

False plea. *See* Sham pleading.

False pretenses. Illegally obtaining money, goods, or merchandise from another by fraud or misrepresentation. As a statutory crime, although defined in slightly different ways in the various jurisdictions, consists generally of these elements: (1) an intent to defraud; (2) the use of false pretenses or representations regarding any existing facts; and (3) the accomplishment of the intended fraud by means of such false pretenses. *People v. Johnson*, 28 Mich.App. 10, 183 N.W.2d 813, 815, 816. Such representation may be implied from conduct or may consist of concealment or non-disclosure where there is duty to speak, and may consist of any acts, work, symbol or token calculated and intended to deceive. *Bright v. Sheriff, Washoe County*, 90 Nev. 168, 521 P.2d 371, 373.

Other definitions of "false pretenses" include: false representation of existing fact or condition by which a party obtains property of another; false representation of existing fact, whether by oral or written words or conduct, calculated to deceive, intended to deceive, and does in fact deceive, whereby one person obtains value from another without compensation; false representation of existing or past fact calculated to induce confidence on part of one to whom representation is made,

and accompanied by or blended with a promise to do something in future, *State v. Parkinson*, 181 Wash. 69, 41 P.2d 1095, 1097; false representation of existing fact, made with knowledge of falsity, with intent that party to whom it is made should act upon it, and acted upon by such party to his detriment; false representation of past or existing fact, made with knowledge of falsity, with intent to deceive and defraud, and which is adapted to deceive person to whom made.

Under Model Penal Code § 223.3, a person is guilty of "theft by deception" if he purposely obtains property of another by deception.

Larceny distinguished. In crime of larceny owner has no intention to part with his property, although he may intend to part with possession, while in false pretenses the owner does intend to part with the property but it is obtained from him by fraud. The intention of owner of property not to part with title when relinquishing possession of property is vital point to be determined in distinguishing between "larceny by fraud" and obtaining property by "false pretenses". *Dobson v. State*, 74 Okl.Cr. 341, 126 P.2d 95, 101.

False representation. For purposes of the common-law tort of fraudulent misrepresentation, such may be either an affirmative misrepresentation or a failure to disclose a material fact when a duty to disclose that fact has arisen. *Rothenberg v. Aero Mayflower Transit Co., Inc.*, D.C.D.C., 495 F.Supp. 399, 406. To maintain an action for damages for "false representation," the plaintiff, in substance, must allege and must prove by a preponderance of the evidence the following elements: (1) that representation was made; (2) that it was false; (3) that the defendant knew it was false, or else made it without knowledge as a positive statement of known fact; (4) that the plaintiff believed the representation to be true; (5) that the plaintiff relied on and acted upon the representation; (6) that the plaintiff was thereby injured; and (7) the amount of the damages. *See also* Deceit; False statement; Fraud; Material fact; Reliance.

False return. *See* Return.

False statement. Statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive. *Third Nat. Bank v. Schatten, C.C.A.Tenn.*, 81 F.2d 538, 540. An incorrect statement made or acquiesced in with knowledge of incorrectness or with reckless indifference to actual facts and with no reasonable ground to believe it correct. *International Shoe Co. v. Lewine, C.C.A.Miss.*, 68 F.2d 517, 518. Such are more than erroneous or untrue and import intention to deceive. *Schapiro v. Tweedie Footwear Corporation, C.C.A.Pa.*, 131 F.2d 876, 878.

Under statutory provision making it unlawful for officer or director of corporation to make any false statement in regard to corporation's financial condition, the phrase means something more than merely untrue or erroneous, but implies that statement is designedly untrue and deceitful, and made with intention to deceive person to whom false statement is made or exhibited.

The federal criminal statute governing false statements applies to three distinct offenses: falsifying, concealing, or covering up a material fact by any trick, scheme or device; making false, fictitious, or fraudulent statements or representations; and making or using any false documents or writing. 18 U.S.C.A. § 1001.

See also Deceit; False representation; Fraud; Material fact; Perjury; Reliance.

False swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor if: (a) the falsification occurs in an official proceeding; or (b) the falsification is intended to mislead a public servant in performing his official function. Model Penal Code, § 241.2.

The essential elements of "false swearing" consist in willfully, knowingly, absolutely and falsely swearing under oath or affirmation on a matter concerning which a party could legally be sworn and on oath administered by one legally authorized to administer it. *Smith v. State*, 66 Ga.App. 669, 19 S.E.2d 168, 169. It must appear that matter sworn to was judicially pending or was being investigated by grand jury, or was a subject on which accused could legally have been sworn, or on which he was required to be sworn. *Capps v. Commonwealth*, 294 Ky. 743, 172 S.W.2d 610, 611. See also False oath; Perjury.

False token. In criminal law, a false document or sign of the existence of a fact, in general, used for the purpose of fraud. Device used to obtain money by false pretenses. See Counterfeit; False weights.

False verdict. See Verdict.

False weights. False weights and measures are such as do not comply with the standard prescribed by the state or government, or with the custom prevailing in the place and business in which they are used.

Falsi crimen /fólsay kráymən/. Fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed (1) by words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures. See Crimen falsi.

Falsification. See Falsify.

Falsify. To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation, alteration, or addition; to tamper with, as to falsify a record or document. The word "falsify" may be used to convey two distinct meanings—either that of being intentionally or knowingly untrue, made with intent to defraud, or mistakenly and accidentally untrue. *Washer v. Bank of America Nat. Trust & Savings Ass'n*, 21 Cal.2d 822, 136 P.2d 297, 301. See also Alteration; Counterfeit; False; Forgery.

To disprove; to prove to be false or erroneous; to avoid or defeat. Spoken of verdicts, appeals, etc.

Falsifying a record. It is a crime, under state and federal statutes, for a person, knowing that he has no privilege to do so, to falsify or otherwise tamper with public records with purpose to deceive or injure anyone or to conceal any wrongdoing. See, e.g., Model Penal Code, § 224.4; 18 U.S.C.A. §§ 1506, 2071, 2073.

Falsity. Term implies more than erroneous or untrue; it indicates knowledge of untruth.

Falsonarius /fólsənériyəs/. A forger; a counterfeiter.

Falso retorno brevium /fólsow rətórnow bríyviyəm/. In old English law, a writ which formerly lay against the sheriff who had execution of process for false returning of writs.

Falsum /fólsəm/. Lat. In the civil law, a false or forged thing; a fraudulent simulation; a fraudulent counterfeit or imitation, such as a forged signature or instrument. Also falsification, which may be either by falsehood, concealment of the truth, or fraudulent alteration, as by cutting out or erasing part of a writing.

Falsus /fólsəs/. Lat. False; fraudulent; erroneous; deceitful; mistaken. In the sense of "deceiving" or "fraudulent," it is applied to persons in respect to their acts and conduct, as well as to things; and in the sense of "erroneous," it is applied to persons on the question of personal identity.

Falsus in uno, falsus in omnibus /fólsəs in yúvnow, fólsəs in ómnəbəs/. False in one thing, false in everything. *Dawson v. Bertolini*, 70 R.I. 325, 38 A.2d 765, 768.

The doctrine means that if testimony of a witness on a material issue is willfully false and given with an intention to deceive, jury may disregard all the witness' testimony. *Hargrave v. Stockloss*, 127 N.J.L. 262, 21 A.2d 820, 823. The maxim deals only with weight of evidence. It does not relieve jury from passing on credibility of the whole testimony of a false swearing witness or excuse jury from weighing the whole testimony. *State v. Willard*, 346 Mo. 773, 142 S.W.2d 1046, 1052. It is a mere rule of evidence affirming a rebuttable presumption of fact, under which the jury must consider all the evidence of the witness, other than that which is found to be false, and it is their duty to give effect to so much of it, if any, as is relieved from the presumption against it and found to be true. It is not a rule of the law of evidence, but is merely an aid in weighing and sifting of evidence. *Dawson v. Bertolini*, 70 R.I. 325, 38 A.2d 765, 768. It is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence.

Fama /féymə/. Lat. Fame; character, reputation; report of common opinion.

Famacide /féyməsəyd/. A killer of reputation; a slanderer.

Fama, fides et oculus non patiuntur ludum /féymə, fáydíyz èt ókyələs nòn pətiyántər l(y)úwdəm/. Fame, faith, and eyesight do not suffer a cheat.

Fama quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat /féymə kwíy sǽpsishiyównəm ind(y)úwsət, əráyray débət ǽpəd bównows èt gréyviyz, nòn kwídam malévélows èt maléladakows, sèd præváydas èt fáydíy dígnas pǽrsównas, nòn sémal sed síypiyəs, kwáyə klémər mínyuwət èt défáméysh(iy)ow mǽnǽféstət/. Report, which induces suspicion, ought to arise from good and grave men; not, indeed, from malevolent and malicious men, but from cautious and credible persons; not only once, but frequently, for clamor diminishes, and defamation manifests.

Familia /fámil(i)yə/. *Old English law.* A household; the body of household servants; a quantity of land, otherwise called "*mansa*," sufficient to maintain one family.

Roman law. A household; a family. Family right; the right or status of being the head of a family, or of exercising the *patria potestas* over others. This could belong only to a Roman citizen who was a "man in his own right."

Spanish law. A family, which might consist of domestics or servants.

Familia emptor /fámiliyiy ém(p)tər/. In Roman law, an intermediate person who purchased the aggregate inheritance when sold *per cæs et libram*, in the process of making a will under the Twelve Tables. This purchaser was merely a man of straw, transmitting the inheritance to the *hæres* proper.

Familia erciscundæ /fámiliyiy ǽrsǽskándiy/. In Roman law, an action for the partition of the aggregate succession of a *familia*, where that devolved upon *cohæredes*. It was also applicable to enforce a contribution towards the necessary expenses incurred on the *familia*.

Familiar. Fair or reasonable knowledge of, or acquaintance with. Closeness; intimacy.

Familiares regis /fámiliyériyz riýjəs/. Persons of the king's household. The ancient title of the "six clerks" of chancery in England.

Familiarity. Close or reasonable acquaintance with or knowledge of.

Family. The meaning of word "family" necessarily depends on field of law in which word is used, purpose intended to be accomplished by its use, and facts and circumstances of each case. *LeRoux v. Edmundson*, 276 Minn. 120, 148 N.W.2d 812, 814. Most commonly refers to group of persons consisting of parents and children; father, mother and their children; immediate kindred, constituting fundamental social unit in civilized society. *People v. Hasse*, 57 Misc.2d 59, 291 N.Y.S.2d 53, 55. A collective body of persons who live in one house and under one head or management. A group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. A group of kindred persons. *Hartley v. Bohrer*, 52 Idaho 72, 11 P.2d 616, 618. Husband and wife and their children,

wherever they may reside, and whether they dwell together or not. *Franklin Fire Ins. Co. v. Shadid*, Tex. Com.App., 68 S.W.2d 1030, 1032.

The word conveys the notion of some relationship, blood or otherwise. *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989. In restricted sense, the word "family" may be used interchangeably with household. *Collins v. Northwest Casualty Co.*, 180 Wash. 347, 39 P.2d 986, 989.

When used in constitution of benefit society, declaring its purpose among others as that of aiding the families of members, the word means such persons as habitually reside under one roof and form one domestic circle, or such persons as are dependent on each other for support or among whom there is legal or equitable obligation to furnish support and in its widest scope it would include all descendants of a common progenitor. *Logan v. St. Louis Police Relief Ass'n*, Mo.App., 133 S.W.2d 1048, 1049, 1050.

As used in context of uninsured motorist insurance coverage, "family" is not confined to those who stand in a legal or blood relationship, but rather should include those who live within the domestic circle of, and are economically dependent on, the named insured (*e.g.* foster child or ward). *Brokenbaugh v. N. J. Manufacturers Ins. Co. et al.*, 158 N.J.Super. 424, 386 A.2d 433.

Descent and descendants. The word "family" may mean all descendants of a common progenitor, *Logan v. St. Louis Police Relief Ass'n*, Mo.App., 133 S.W.2d 1048, 1049, 1050; *In re Lund's Estate*, 26 Cal.2d 472, 159 P.2d 643, 645; or, those who are of the same lineage, or descend from one common progenitor.

Homestead and exemption laws. To constitute family there must be one whom law designates or recognizes as head of family who by natural ties or by legal or moral obligation is under duty to support others of the household. *Owens v. Altsheller & Co.*, 263 Ky. 727, 93 S.W.2d 844, 846. To constitute persons living with another in same house a "family", it must appear that they are being supported by that other in whole or in part, and are dependent on him therefor, and that he is under a natural or moral obligation to render such support.

Household. Those who live in same household subject to general management and control of the head thereof. Family and household are substantially synonymous terms for certain purposes.

Support. A "family" is a collection of persons living together under one head, under such circumstances or conditions that the head is under a legal or moral obligation to support the other members, and the other members are dependent upon him or her for support. *Hurt v. Perryman*, 173 Tenn. 646, 122 S.W.2d 426, 427. Those entitled by law to look to person for support and protection. *In re Fulton's Estate*, 15 Cal.App.2d 202, 59 P.2d 508, 510. *See also* Dependent.

Wills. As respects construction of will, the word "family" denotes a group of persons related to each other by marriage or blood living together under a single roof and comprising a household whose head is usually the

father or husband, but the word is not one of inflexible meaning and its significance to a large extent depends upon the context and the purpose for which it is employed. For example, the word "family" has been held to include those who have left father's home and have married and established their own homes when context and purpose indicate such significance should be attributed to the word. *Magill v. Magill*, 317 Mass. 89, 56 N.E.2d 892, 894, 896.

When the word "family" is used to designate those entitled to receive a legacy, the intended meaning of the word depends upon the context of the will and upon a showing as to whom were the objects of the testator's bounty by reason of kinship or friendship.

Family allowance. Consists of certain amount of decedent's property allocated for the support of the widow and children during the period of estate administration.

Family arrangement. A term denoting an agreement between a father and his children, or between the heirs of a deceased father, to dispose of property, or to partition it in a different manner than that which would result if the law alone directed it, or to divide up property without administration. In these cases, frequently, the mere relation of the parties will give effect to bargains otherwise without adequate consideration. *See also* Family settlement.

Family automobile doctrine. In a number of jurisdictions, when an automobile is maintained by the owner thereof for the general use and convenience of his or her family, such owner is liable for the negligence of a member of the family, having general authority to drive the car, while it is being used as such family car; that is, for the pleasure or convenience of the family or a member of it. This doctrine has been rejected, superseded, or limited in its application, in most states.

The doctrine rests upon the basis that the automobile is furnished by the husband in his individual capacity and as common-law head of the family for the use of the family, and not as the agent of the community. Under the doctrine, a father furnishing automobile for pleasure and convenience of family makes the use of automobile by family his business and any member of family driving automobile with father's express or implied consent is the father's agent and the father is liable for the member's negligence. *Donn v. Kunz*, 52 Ariz. 219, 79 P.2d 965, 966, 967.

See also Family group; Family purpose doctrine, which are synonymous terms.

Family Bible. A Bible containing a record of the births, marriages, and deaths of the members of a family.

Family car doctrine. *See* Family automobile doctrine.

Family council. *See* Family arrangement; Family meeting; Conseil de famille.

Family court. Such courts exist in several states. While the jurisdiction of such courts will differ somewhat from state to state, typically this court will have jurisdiction over: (1) child abuse and neglect proceedings, (2) support proceedings, (3) proceedings to deter-

mine paternity and for support of children born out of wedlock, (4) proceedings permanently to terminate custody by reason of permanent neglect, (5) proceedings concerning juvenile delinquency and whether a person is in need of supervision, and (6) family offenses proceedings. The family court may be a division or department of a court of general jurisdiction.

Family disturbance. Generic term used to describe any crime, tort or disorder within or touching the family.

Family Division. A division of the High Court of England with jurisdiction over family matters. Formerly the Probate, Divorce and Admiralty Division. Renamed in 1970. *See now* Matrimonial and Family Proceedings Act, 1984, § 32. *See also* Family court.

Family expense statutes. State statutes which permit charge against property of husband or wife for debts connected with family support and maintenance such as rent, food, clothing, and tuition.

As used in tax law, expenses incurred for personal, living or family purposes for which no deduction may be claimed. I.R.C. § 262.

Family group. Within purview of the family automobile doctrine, is not confined to persons related to the owner, but includes members of the collective body of persons living in his household for whose convenience the car is maintained and who have authority to use it. *See also* Family automobile doctrine; Family purpose doctrine, which are synonymous terms.

Family law. Branch or specialty of law, also denominated "domestic relations" law, concerned with such subjects as adoption, amendment, divorce, separation, paternity, custody, support and child care. *See also* Family court.

Family meeting. In Louisiana, an advisory jury called to aid court in determining matters or affairs in which members of family are concerned. An institution of the laws of Louisiana, being a council of the relatives (or, if there are no relatives, of the friends) of a minor, for the purpose of advising as to his affairs and the administration of his property. It corresponds to the "conseil de famille" of French law.

Family partnership. In tax law, partnership consisting of members of family and such members shall include only a spouse, ancestors, lineal descendants, and any trusts for the benefit of such persons. I.R.C. § 704(e).

Family physician. A physician who regularly attends and is consulted by the members of the family as their medical adviser; but he need not attend in all cases or be consulted by all the members of the family.

Family purpose doctrine. Under this doctrine where one purchases and maintains automobile for comfort, convenience, pleasure, entertainment and recreation of one's family, any member thereof operating automobile will be regarded as agent or servant of the owner and owner will be held liable for injuries sustained by third person by reason of negligent operation of vehicle by member of family. *Freeland v. Freeland*, 152 W.Va. 332, 162 S.E.2d 922, 925. This doctrine has been reject-

ed, or limited in its application, in many states. *See also* Family automobile doctrine and Family group, which are synonymous terms.

Family service rule. *See* Family automobile doctrine.

Family settlement. An agreement between members of a family settling the distribution of family property among them. *Fitzgerald v. Nelson*, 159 Or. 264, 79 P.2d 254, 255. An arrangement or an agreement, between heirs of a deceased person, by which they agree on distribution or management of estate without administration by court having jurisdiction of such administration proceedings. *Wright v. Saltmarsh*, 174 Okl. 226, 50 P.2d 694, 703. A term of practically the same significance as "family arrangement" (*q.v.*).

Famosus /fámówsəs/. In the civil and old English law, relating to or affecting injuriously the character or reputation; defamatory; slanderous; scandalous.

Famosus libellus /fámówsəs ləbéləs/. A libelous writing. A term of the civil law denoting that species of *injuria* which corresponds nearly to libel or slander.

Fanatic. A religious or political enthusiast; a person entertaining extravagant notions, or affected by excessive zeal or enthusiasm, especially upon religious or political subjects.

Fanciful terms. In trademark law, those terms that are "coined," having no independent meaning; they may be registered as trademarks even if they have not acquired secondary meaning. *Abraham Zion Corp. v. Lebow*, C.A.N.Y., 761 F.2d 93, 104.

Fanega /fanéygə/. In Spanish law, a measure of land varying in different provinces, but in the Spanish settlements in America consisting of 6,400 square varas or yards.

Fannie Mae. *See* Federal National Mortgage Association.

Faqueer /fəkir/. *See* Fakir.

FAR. *See* Federal Acquisition Regulations.

Fardel of land /fárdəl əv lænd/. In old English law, the fourth part of a yard-land.

Farding-deal. The fourth part of an acre of land.

Fare. A voyage, journey, or passage. The transportation charge paid by passenger. A paying passenger.

As used in connection with interstate transportation means a rate of charge for the carriage of passengers, as approved by the proper governmental agency. *Krause v. Pacific Mut. Life Ins. Co. of California*, 141 Neb. 844, 5 N.W.2d 229, 232.

Farleu (or **Farley**) /färlyúw/färliy/. Money paid by tenants in lieu of a heriot. It was often applied to the best chattel, as distinguished from *heriot*, the best beast.

Farlingarii /färləngériyay/. Whoremongers; adulterers.

Farm, n. A tract of land devoted to agriculture, pasturage, stock raising, or some allied industry. Includes dairy, stock, and poultry farms.

The original meaning of the word was rent; a term; a lease of lands; a leasehold interest, and by a natural transition it came to mean the land out of which the rent or lease issued.

A letting out of the collection of taxes and revenues for a fixed sum.

See also Farmer.

Farm, v. To lease or let; to demise or grant for a limited term and at a stated rental. To carry on business or occupation of farming.

Farm Credit Administration. An independent federal agency, responsible for supervising and coordinating activities of the cooperative Farm Credit System. The System is comprised of Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations, and banks for cooperatives. Initially capitalized by the United States, the entire system is now owned by its users. *See also* Farmers Home Administration; Federal farm credit system.

Farm crossing. A roadway over or under a railroad track for the purpose of reaching land cut off by the track.

Farmer. A cultivator; a husbandman; an agriculturist; one engaged in agricultural pursuits as a livelihood or business, *Skinner v. Dingwell*, C.C.A.Iowa, 134 F.2d 391, 393; one engaged in dairy farming and in production of poultry or livestock, *Leonard v. Bennett*, C.C.A.Or., 116 F.2d 128, 131, 132, 134; one engaged in the business of cultivating land or employing it for the purpose of husbandry, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one living on his farm from revenue thereof and personally operating it on large scale as his primary activity; one personally engaged in farming, *Shyvers v. Security-First Nat. Bank of Los Angeles*, C.C.A.Cal., 108 F.2d 611, 612, 613; one primarily engaged in agricultural pursuits; one who cultivates a considerable tract of land in some one of the usual recognized ways of farming; one who cultivates a farm either as owner or lessee, *Kaslovitz v. Reid*, C.C.A.Utah, 128 F.2d 1017, 1018; one who cultivates a farm, whether the land be his own or another's; one who directs the business of a farm and works at farm labor, *Stoner v. New York Life Ins. Co.*, Mo.App., 90 S.W.2d 784, 795; one who expends his energies and production efforts in tilling the soil, raising crops and marketing them, thereby promoting his financial interest and advancement; one who is primarily, personally, and bona fide engaged in farming although he does not spend all of his time therein, work farm without assistance, or refrain from engaging in secondary activities, *In re Lindsay*, D.C.Tex., 41 F.Supp. 948, 950. *See also* Husbandman.

As defined in Bankruptcy Code, is person who received more than 80 percent of his gross income during the taxable year immediately preceding commencement of bankruptcy proceeding from a farming operation owned or operated by such person. Bankruptcy Code § 101. *See also* Bankruptcy proceedings (*Family farmer bankruptcy*).

Farmer bankruptcy. See Bankruptcy proceedings (*Fam-ily farmer bankruptcy*).

Farmers Home Administration (FmHA). A division of the Department of Agriculture engaged in making direct mortgage loans to farmers and also home mortgage insurance and guarantee programs in rural areas and small towns. See also Farm Credit Administration; Federal farm credit system.

Farming operation. As defined in Bankruptcy Code, term includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state. Bankruptcy Code § 101.

Farming products. All things are considered as "farming products" or "agricultural products" which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits.

Crops or livestock or supplies used or produced in farming operations or products of crops or livestock in their unmanufactured states, if they are in the possession of a debtor engaged in farming operations. U.C.C. § 9-109(3).

Farming purposes. These words are not limited in meaning to mere cultivation of soil and maintenance of improvements thereon for such purposes, but include raising of livestock, as well as production of farm crops directly from soil. *State v. Superior Court for Walla Walla County*, 168 Wash. 142, 10 P.2d 986, 987. See Farming operation.

Farm labor or laborer. Agricultural employment and farm labor are used as practically synonymous and include all farm work and work incidental thereto. *Smythe v. Phoenix*, 63 Idaho 585, 123 P.2d 1010, 1012.

One employed as a laborer on a farm, especially one who does all kinds of farm work; one employed in or about business of farming. One employed on a farm in customary types of farm work or employed and paid directly by a farmer in transporting his raw produce. *Cedarburg Fox Farms v. Industrial Commission*, 241 Wis. 604, 6 N.W.2d 687, 689, 690. One who devotes his time to ordinary farm labor as gainful occupation with some reasonable degree of regularity and continuity. One who labors on a farm in raising crops or livestock, or in doing general farm work.

See also Agricultural labor; Farmer.

Farm let. Technical words in a lease creating a term for years. Operative words in a lease, which strictly mean to let upon payment of a certain rent in farm; *i.e.*, in agricultural produce. See also Fee-farm; Fee-farm rent.

Farm out. To let for a term at a stated rental. To turn over for performance or care. To exhaust farm land by continuous raising of single crop.

Among the Romans the collection of revenue was farmed out, and the same system existed in France before the revolution of 1789; in England the excise

taxes were farmed out, and thereby their evils were greatly aggravated. The farming of the excise was abolished in Scotland by the union, having been before that time abandoned in England. In all these cases the custom gave rise to great abuse and oppression of the people, and in France most of the farmers-general, as they were called, perished on the scaffold.

Farmout agreement. An agreement by which one who owns an oil and gas lease agrees to assign to another an interest in the lease in return for drilling and testing operations on the lease. Under standard "farmout agreement" farmout operator drills at his own expense and upon completion of commercial well becomes owner of working interest and usually operates well or arranges for its operation, the assignor retaining a royalty. *Northern Natural Gas Co. v. Grounds*, D.C.Kan., 292 F.Supp. 619, 628.

Farm products. See Farming products.

Farrier /færiyər/. Occupation of shoeing horses.

Farthing /fārðɪŋ/. The fourth part of an English penny.

Farthing of gold. An ancient English coin, containing in value the fourth part of a noble.

Farthing of land. A great quantity of land, differing much from farding-deal (*q.v.*).

Farvand. Standing by itself, this word signifies "passage by sea or water". In charter-parties, it means voyage or passage by water.

Fas /fæs/. Lat. Right; justice; the divine law. In primitive times it was the will of the gods, embodied in rules regulating not only ceremonials but the conduct of all men.

F.A.S. "Free alongside ship." Delivery term under which the seller is obligated to deliver goods to a specified loading dock and bears expense and risk of loss up to that point. Term used in sales price quotations, indicating that the price includes all costs of transportation and delivery of the goods alongside the ship. See U.C.C. § 2-319(2).

FASB. See Financial Accounting Standards Board.

Fast-day. A day of fasting and penitence, or of mortification by religious abstinence.

Fastermans, fastermannes, or fastingmen /fæstərmanz/fæstɪnmən/. Men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behavior.

Fast estate. See Estate.

Fasti /fæstay/. In Roman law, lawful. *Dies fasti*, lawful days; days on which justice could lawfully be administered by the praetor.

Fatal errors. As grounds for new trial, mean harmful errors; reversible errors. Such only as may reasonably be held to have worked substantial injury or prejudice to complaining party. Such errors generally afford party

right to new trial, as contrasted with "harmless" errors which do not. See Error; Plain error rule.

Fatal injury. A term embracing injuries resulting in death, which, as used in accident and disability insurance policies is distinguished from "disability," which embraces injuries preventing the insured from performing the work in which he is usually employed, but not resulting in death.

Fatal variance. A variance in indictment tending to mislead defendant in making defense or one preventing plea of former jeopardy. A "variance" occurs when facts proved at trial are different from those alleged in the indictment; however, variance constitutes grounds for reversing a conviction only when it affects defendant's "substantial rights," that is, when the variance deprives a defendant of sufficiently specific information to prepare a defense and to be protected against surprise at trial, and prevents him from asserting his constitutional protection against double jeopardy. *U.S. v. George, C.A.Mass., 752 F.2d 749, 753.* It must be misleading or serve so as to substantially and materially mislead the adverse party. *Lorenz v. Santa Monica City High School Dist., 51 Cal.App.2d 393, 124 P.2d 846, 851.* See also Variance.

Fatetur facinus qui iudicium fugit /fətiytər fāsənəs kwəy jədish(iy)əm fyúwjt/. He who flees judgment confesses his guilt.

Father. A male parent. He by whom a child is begotten. Natural father; procreator of a child. For putative father, see that title.

As used in law, this term may (according to the context and the nature of the instrument) include a putative as well as a legal father, also a stepfather, an adoptive father, or a grandfather, but is not as wide as the word "parent," and cannot be so construed as to include a female.

A priest of the clergy.

Father-in-law. The father of one's wife or husband.

Fathom. A nautical measure of six feet in length. Occasionally used as a superficial measure of land and in mining, and in that case it means a square fathom or thirty-six square feet.

Fatua mulier /fətyuwə myúwl(i)yər/. A whore; prostitute.

Fatuitas /fətyúwətəs/. In old English law, fatuity; idiosyncy.

Fatum /fəytəm/. Lat. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention.

Fatum iudicium /fətyuwəm jədish(iy)əm/. A foolish judgment or verdict. As applied to the latter it is one rather false by reason of folly than criminally so, or as amounting to perjury.

Fatuus /fətyuwəs/. An idiot or fool. Foolish; silly; absurd; indiscreet; or ill considered. See Fatuum iudicium.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit /fətyuwəs, əpəd jürəskənsəltəws nóstrows, əksípətər prəw nón kómpəs méntəs; et fətyuwəs disətər kwəy omnáynəw désəpət/. Fatuous, among our jurisconsults, is understood for a man not of right mind; and he is called "fatuus" who is altogether foolish.

Fatuus præsumentur qui in proprio nomine errat /fətyuwəs prəz(y)úwmatər kwəy in prəwpriyow nóməniy éhrət/. A man is presumed to be simple who makes a mistake in his own name.

Faubourg /fəwbürg/fowbúr/. In French law, and in Louisiana, a district or part of a town adjoining the principal city; a suburb.

Fauces terræ /fəsiyz téhriy/. (Jaws of the land.) Narrow headlands and promontories, inclosing a portion or arm of the sea within them.

Fault. Negligence; an error or defect of judgment or of conduct; any deviation from prudence, duty, or rectitude; any shortcoming, or neglect of care or performance resulting from inattention, incapacity, or perversity; a wrong tendency, course, or act; bad faith or mismanagement; neglect of duty. *Continental Ins. Co. v. Sabine Towing Co., C.C.A.Tex., 117 F.2d 694, 697.* Under general liability principles, "fault" is a breach of a duty imposed by law or contract. *Angelo Pavone Enterprises, Inc., v. South Cent. Bell Telephone Co., La.App. 4 Cir., 459 So.2d 1223, 1226.* The term connotes an act to which blame, censure, impropriety, shortcoming or culpability attaches. *Kersey Mfg. Co. v. Rozac, 207 Pa.Super. 182, 215 A.2d 323, 325.*

Wrongful act, omission or breach. U.C.C. § 1-201(16).

See also Negligence; No fault; *Pari delicto*; Tort.

Fauntleroy doctrine. In *Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039*, the U.S. Supreme Court held that a state must give full faith and credit to a judgment of a sister state if such state had jurisdiction to render it even though the judgment is based on an original cause of action which is illegal in the state in which enforcement is sought.

Fautor /fətər/. *Old English law.* A favorer or supporter of others; an abettor. A partisan. One who encouraged resistance to the execution of process.

Spanish law. Accomplice; the person who aids or assists another in the commission of a crime.

Faux /fəw/. *Civil law.* The fraudulent alteration of the truth. The same with the Latin *falsum* or *crimen falsi*.

French law. A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. *Faux* may be understood in three ways. In its most extended sense it is the alteration of truth, with or without intention; it is nearly synonymous with "lying." In a less extended sense, it is the alteration of truth, accompanied with fraud, *mutatio veritatis cum dolo facta*. And lastly, in a narrow, or rather the legal, sense of the word, when it is a question to know if the *faux* be a crime, it is the fraudulent alteration of the

truth in those cases ascertained and punished by the law.

Old English law. False; counterfeit. *Faux action*, a false action. *Faux money*, counterfeit money. *Faux peys*, false weights. *Faux serement*, a false oath.

Favor, n. An act of kindness or generosity, as distinguished from one that is inspired by regard for justice, duty, or right. Friendly regard shown towards another. Bias; partiality; lenity; prejudice. *See* Challenge.

Favor, v. To regard with favor; to aid or to have the disposition to aid; to show partiality or unfair bias towards; practically synonymous with "support."

Favorabilia in lege sunt fiscus, dos, vita, libertas /fəyvərəbil(i)yə in liyjy sənt fɪskəs, dɔws, vɑytə, libərtəs/. Things favorably considered in law are the treasury, dower, life, liberty.

Favorabiliores rei, potius quam actores, habentur /fəyvərəbiliyóriyz riyay, pówsh(i)yəs kwəm októriyz, həbéntər/. The condition of the defendant must be favored, rather than that of the plaintiff.

Favorabiliores sunt executiones aliis processibus quibuscunque /fəyvərəbiliyóriyz sənt əksəkyúwshiyówniyz əliyas prəsésəbəs kwibəskəpkwi/. Executions are preferred to all other processes whatever.

Favored beneficiary. Within rule that confidential relations and activity by favored beneficiary in the execution of the will raises a prima facie presumption of undue influence, is one who in the circumstances has been favored over others having equal claims to testator's bounty. *Mindler v. Crocker*, 245 Ala. 578, 18 So.2d 278, 281.

Favored nation. *See* Most favored nation clause.

Favores ampliandi sunt; odia restringenda /fəvóriyz əmpliyənday sənt; ówdiyə riystrinjéndə/. Favors are to be enlarged; things hateful restrained.

Favoritism. Invidious preference and selection based on friendship and factors other than merit. *See* Nepotism; Patronage.

Favor legitimacionis /fəyvər læjitəmэйshiyownəs/. Favor of legitimacy; in conflicts of law, principle which is invoked in cases of children's status of legitimacy.

Favor matrimonii /fəyvər mətrəmówniyay/. Favor of marriage. In conflicts of law, principle invoked to uphold a marriage.

Favor negotii /fəyvər nəgówshiyay/. In conflicts of laws, legal principle which favors agreement of the parties against a construction which would render an agreement illegal or unenforceable.

Favor paternitatis /fəyvər pətərnátéytəs/. Favor of paternity. Legal principle which is invoked to uphold paternity of child.

Favor solutionis /fəyvər səl(y)uwshiyównəs/. In conflicts, a rule of interpretation of a contract in terms of the applicable law governing performance.

Favor testamenti /fəyvər tètəméntay/. In conflicts, general rule favoring the validity of a will.

F.B.I. *See* Federal Bureau of Investigation.

F.C.A. *See* Farm Credit Administration.

F.C.C. *See* Federal Communications Commission.

F.C.I.C. Federal Crop Insurance Corporation. *See* Insurance.

F.D.A. *See* Food and Drug Administration.

F.D.I.C. *See* Federal Deposit Insurance Corporation.

Feal /fiy(ə)l/. Faithful; truthful; true. Tenants by knight service swore to their lords to be *feal* and *leal*; i.e., faithful and loyal. *Feal homager*, faithful subject.

Fealty /fiy(ə)ltiy/. In feudal law, fidelity; allegiance to the feudal lord of the manor; the feudal obligation resting upon the tenant or vassal by which he was bound to be faithful and true to his lord, and render him obedience and service. This fealty was of two sorts: that which is general, and is due from every subject to his prince; the other special, and required of such only as in respect of their fee are tied by this oath to their landlords.

Fealty signifies fidelity, the phrase "feal and leal" meaning simply "faithful and loyal." Tenants by knights' service and also tenants in socage were required to take an oath of fealty to the king or others, their immediate lords; and fealty was one of the conditions of their tenure, the breach of which operated a forfeiture of their estates.

Although foreign jurists considered fealty and homage as convertible terms, because in some continental countries they were blended so as to form one engagement, yet they were not to be confounded in our country, for they did not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist.

Fear. Apprehension of harm; dread; consciousness of approaching danger. Mental response to threat. Profound reverence and awe.

Within Hobbs Act extortion definition, includes fear of economic loss as well as of physical harm. *U.S. v. Addonizio*, C.A.N.J., 451 F.2d 49, 72.

Feasance /fiyzəns/. A doing; the doing of an act; a performing or performance. *See* Malfeasance; Misfeasance; Nonfeasance.

Feasant /fiyzənt/. Doing, or making, as, in the term "damage feasant" (doing damage or injury), spoken of cattle straying upon another's land.

Feasible. Capable of being done, executed, affected or accomplished. Reasonable assurance of success. *See* Possible.

Feasor /fiyzər/. Doer; maker. *Feasors del estatute*, makers of the statute. Also used in the compound term, "tort-feasor," one who commits or is guilty of a tort.

Feasts. Certain established festivals or holidays in the ecclesiastical calendar. These days were anciently used as the dates of legal instruments, and in England the quarter-days, for paying rent, are four feast-days. The terms of the courts, in England, before 1875, were fixed to begin on certain days determined with reference to the occurrence of four of the chief feasts.

Featherbedding. The name given to employee practices which create or spread employment by unnecessarily maintaining or increasing the number of employees used, or the amount of time consumed, to work on a particular job. Most of these practices stem from a desire on the part of employees for job security in the face of technological improvements.

F.E.C.A. See Federal Employees' Compensation Act.

Feciales /fiyshi'yéilyz/. Among the ancient Romans, that order of priests who discharged the duties of ambassadors. Subsequently their duties appear to have related more particularly to the declaring of war and peace.

Fecial law /fiyshəl ló/. The nearest approach to a system of international law known to the ancient world. It was a branch of Roman jurisprudence, concerned with embassies, declarations of war, and treaties of peace. It received this name from the *feciales* (q.v.), who were charged with its administration.

Federal. Belonging to the general government or union of the states. Founded on or organized under the Constitution of the United States. Pertaining to the national government of the United States. Of or constituting a government in which power is distributed between a central authority (i.e. federal government) and a number of constituent territorial units (i.e. states). See also Federal government.

A league or compact between two or more states, to become united under one central government. See Federation.

Federal Acquisition Regulations. Federal regulations governing government contracting methods, requirements, and procedures. 48 CFR (Ch. 1).

Federal Acts. Statutes enacted by Congress, relating to matters within authority delegated to federal government by U.S. Constitution. Compare State law.

Federal agency. Any executive department, military department, government corporation, government-controlled corporation or other establishment in the executive branch of government including the Executive office of the President or any independent regulatory agency. 5 U.S.C.A. § 552(f).

Federal Aviation Administration. The Federal Aviation Administration (FAA), formerly the Federal Aviation Agency, became a part of the Department of Transportation in 1967 as a result of the Department of Transportation Act (80 Stat. 932). The Federal Aviation Administration is charged with regulating air commerce to foster aviation safety; promoting civil aviation and a national system of airports; achieving efficient use of navigable airspace; developing and operating a common

system of air traffic control and air navigation for both civilian and military aircraft; and developing and implementing programs and regulations to control aircraft noise, sonic boom, and other environmental effects of civil aviation.

Federal Bureau of Investigation. The FBI (established in 1908) is charged with investigating all violations of Federal laws with the exception of those which have been assigned by legislative enactment or otherwise to some other Federal agency. The FBI's jurisdiction includes a wide range of responsibilities in the criminal, civil, and security fields. Among these are espionage, sabotage, and other subversive activities; kidnaping; extortion; bank robbery; interstate transportation of stolen property; civil rights matters; interstate gambling violations; fraud against the Government; and assault or killing the President or a Federal officer. Cooperative services of the FBI for other duly authorized law enforcement agencies include fingerprint identification, laboratory services, police training, and the National Crime Information Center.

Federal census. A census of each state or territory or of a certain state or of any subdivision or portion of any state, provided it is taken by and under the direction and supervision of the Census Bureau of the United States, and approved and certified by it as the census of that state or subdivision. See Census.

Federal citizenship. Rights and obligations accruing by reason of being a citizen of the United States. State or status of being a citizen of the United States.

A person born or naturalized in the United States and subject to the jurisdiction thereof is a citizen of the United States and of the State wherein he resides. Fourteenth Amend., U.S. Const.

See also Citizenship; Naturalization.

Federal common law. A body of decisional law developed by the federal courts. The application of this body of common law is limited by the *Erie* doctrine and by the Rules of Decision Act, which provides that except for cases governed by the Constitution, the treaties of the United States, or acts of Congress, federal courts are to apply state law. Areas in which federal common law have been developed include federal "proprietary" interests, admiralty and foreign relations. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188. See also *Erie v. Tompkins*; Rules of Decision Act; *Swift v. Tyson* Case.

Federal Communications Commission. The Federal Communications Commission was created by the Communications Act of 1934 to regulate interstate and foreign communications by wire and radio in the public interest. It was assigned additional regulatory jurisdiction under the provisions of the Communications Satellite Act of 1962. The scope of its regulatory powers includes radio and television broadcasting) telephone, telegraph, and cable television operation; two-way radio and radio operators; and satellite communication.

Federal courts. The courts of the United States (as distinguished from state, county, or city courts) as cre-

ated either by Art. III of U.S. Const., or by Congress. See specific courts; e.g., Courts of Appeals, U.S.; Claims Court, U.S.; District (*District courts*); Supreme court; Three-judge courts.

Federal crimes. Those acts which have been made criminal by federal law. There are no federal common law crimes though many federal statutes have incorporated the elements of common law crimes. Most federal crimes are codified in Title 18 of the United States Code; though other Code Titles also include specific crimes. Such crimes (e.g., RICO offenses, tax evasion, interstate kidnapping) are prosecuted in federal courts.

Federal Deposit Insurance Corporation. The FDIC is an independent agency within the executive branch of the Government. It insures, up to the statutory limitation, deposits in qualified banks and savings associations. 12 U.S.C.A. § 1811.

Federal Employees' Compensation Act. Type of workers' compensation plan for federal employees by which payments are made for death or disability sustained in performance of duties of employment. 5 U.S.C.A. § 8101 *et seq.*

Federal Employer's Liability Act. Federal workers' compensation law which protects employees of railroads engaged in interstate and foreign commerce. 45 U.S.C.A. § 51 *et seq.* Payments are made for death or disability sustained in performance of duties of employment.

Federal Energy Regulatory Commission. The successor agency to the Federal Power Commission responsible for administering the Natural Gas Act and the Natural Gas Policy Act.

Federal farm credit system. Consists of the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made part of the system. The farm credit system as a whole is regulated by the Farm Credit Administration, an independent executive agency which sets policy and exercises supervisory authority. 12 U.S.C.A. §§ 2001-2260. See also Farm Credit Administration.

Federal government. The system of government administered in a nation formed by the union or confederation of several independent states.

In strict usage, there is a distinction between a *confederation* and a *federal government*. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the central government acts upon them, not upon the individual citizens. In a *federal government*, on the other hand, the allied states form a union (e.g. United States),—not, indeed, to such an ex-

tent as to destroy their separate organization or deprive them of *quasi* sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true national government, possessing sovereignty both external and internal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all, in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "*Staatenbund*" and "*Bundesstaat*;" the former denoting a league or confederation of states, and the latter a federal government, or state formed by means of a league or confederation.

See also Federal.

Federal grand jury. See Jury.

Federal Home Loan Bank Board. The federal agency formerly charged with regulating federal savings and loan associations and the Federal Home Loan Bank system. Abolished in 1989, its functions are now performed by the Office of Thrift Supervision and the Federal Housing Finance Board. See also Federal Housing Finance Board; Office of Thrift Supervision.

Federal Home Loan Banks. Banks created under the Federal Home Loan Bank Act of 1932, for the purpose of keeping a permanent supply of money available for home financing. The banks are controlled by the Federal Housing Finance Board. Savings and loans, insurance companies, and other similar companies making long term mortgage loans may become members of the Federal Home Loan Bank System, and thus may borrow from one of twelve regional banks throughout the country.

Federal Home Loan Mortgage Corporation. A federal agency which purchases first mortgages (both conventional and federally insured) from members of the Federal Reserve System, and the Federal Home Loan Bank System. Commonly called "Freddie Mac."

Federal Housing Administration. This federal agency, established by Congress in 1934, insures mortgage loans made by FHA-approved lenders on homes that meet FHA standards in order to make mortgages more desirable investments for lenders.

Federal Housing Finance Board. An independent agency in the executive branch charged with supervising the system of Federal Home Loan Banks. See also Federal Home Loan Banks.

Federal instrumentality. A means or agency used by the federal government to implement or carry out a federal law or function. Capitol Building & Loan Ass'n v. Kansas Commission of Labor and Industry, 148 Kan. 446, 83 P.2d 106, 107. A government agency immune from state control. Waterbury Sav. Bank v. Danaher, 128 Conn. 78, 20 A.2d 455, 458. See Administrative agency.

Federal Insurance Contributions Act. Federal Act imposing social security tax on employees, self employed, and employers. Under the F.I.C.A. the employer

matches the tax paid by the employee. These taxes fund the social security and medicare programs.

Federalism. Term which includes interrelationships among the states and relationship between the states and the federal government.

Federalist Papers. A series of 85 essays by Alexander Hamilton, James Madison and John Jay, expounding and advocating the adoption of the Constitution of the United States. All but six of the essays were first published in the "Independent Journal" of New York City from October, 1787, to April, 1788.

Federal Judicial Code. This Code, comprising Title 28 of the United States Code, is concerned with the organization, jurisdiction, venue, and procedures of the federal court system. Also covered by this Code is the Department of Justice as well as court officers and personnel.

Federal jurisdiction. Powers of federal courts founded on U.S. Constitution (Article III) and Acts of Congress (e.g. Title 28 of United States Code). *See* Diversity of citizenship; Federal question jurisdiction.

Federal Land Banks. Regional banks established by Congress, and regulated by U.S. Farm Credit Administration, to provide mortgage loans to farmers. *See* Federal farm credit system; Federal Home Loan Banks.

Federal laws. *See* Federal Acts.

Federal Maritime Commission. The Federal Maritime Commission regulates the waterborne foreign and domestic offshore commerce of the United States, assures that United States international trade is open to all nations on fair and equitable terms, and guards against unauthorized monopoly in the waterborne commerce of the United States. This is accomplished through maintaining surveillance over steamship conferences and common carriers by water; assuring that only the rates on file with the Commission are charged; approving agreements between persons subject to the Shipping Act; guaranteeing equal treatment to shippers and carriers by terminal operators, freight forwarders, and other persons subject to the shipping statutes; and ensuring that adequate levels of financial responsibility are maintained for indemnification of passengers or oil spill cleanup.

Federal Mediation and Conciliation Service. The Federal Mediation and Conciliation Service helps prevent disruptions in the flow of interstate commerce caused by labor-management disputes by providing mediators to assist disputing parties in the resolution of their differences. The Service can intervene on its own motion or by invitation of either side in a dispute. Mediators have no law enforcement authority and rely wholly on persuasive techniques. The Service also helps provide qualified third party neutrals as factfinders or arbitrators.

Federal National Mortgage Association. Organized in 1938 to provide a secondary mortgage market for purchase and sale of mortgages guaranteed by Veterans

Administration and those insured under Federal Housing Administration. The short name for this association is "Fannie Mae".

Federal Power Commission. The Federal Power Commission was terminated in 1977, with its functions of regulating the interstate energy industry taken over by the Department of Energy, and, within the DOE, by the Federal Energy Regulatory Commission.

Federal pre-emption. The U.S. Constitution and acts of Congress have given to the federal government exclusive power over certain matters such as interstate commerce and sedition to the exclusion of state jurisdiction. Occurs where federal law so occupies the field that state courts are prevented from asserting jurisdiction. *State v. McHorse*, 85 N.M. 753, 517 P.2d 75, 79. *See also* Preemption.

Federal question jurisdiction. Cases arising under Constitution of United States, Acts of Congress, or treaties, and involving their interpretation and application, and of which jurisdiction is given to federal courts, are commonly described as involving a "federal question." *See* U.S.Const., Art. III, Sec. 2, and 28 U.S.C.A. § 1331 with respect to "federal question" jurisdiction of federal courts.

Federal Register. The Federal Register, published daily, is the medium for making available to the public Federal agency regulations and other legal documents of the executive branch. These documents cover a wide range of Government activities. An important function of the Federal Register is that it includes proposed changes (rules, regulations, standards, etc.) of governmental agencies. Each proposed change published carries an invitation for any citizen or group to participate in the consideration of the proposed regulation through the submission of written data, views, or arguments, and sometimes by oral presentations. Such regulations and rules as finally approved appear thereafter in the Code of Federal Regulations.

Federal regulations. *See* Code of Federal Regulations; Federal Register.

Federal Reporter. The Federal Reporter (consisting of a First and Second series) publishes opinions of the below listed federal courts:

1880-1932

Circuit Court of Appeals

District Courts

U.S. Court of Customs and Patent Appeals

Court of Claims of the U.S.

Court of Appeals of the District of Columbia

1932-present

U.S. Courts of Appeals

1932-1982

U.S. Court of Customs and Patent Appeals

1942-61, 1972-present

U.S. Emergency Court of Appeals

1960-1982

U.S. Court of Claims (Claims Court decisions published in U.S. Claims Court Reporter 1983 to present)

See also Federal Supplement.

Federal Reserve Act. Law which created Federal Reserve banks which act as agents in maintaining money reserves, issuing money in the form of bank notes, lending money to banks, and supervising banks. Administered by Federal Reserve Board (*q.v.*).

Federal Reserve Banks. *See* Federal Reserve Act; Federal Reserve Board of Governors; Federal Reserve System.

Federal Reserve Board of Governors. The seven-member Board of Governors, appointed by the President and confirmed by the Congress, sets reserve requirements for member banks, reviews and approves the discount-rate actions of regional Federal Reserve Banks, sets ceilings on the rates of interest that banks can pay on time and savings deposits, and issues regulations. Members also sit on the Federal Open Market Committee—the principal instrument for implementing the Board's national monetary policy.

Federal reserve notes. Form of currency issued by Federal Reserve Banks in the likeness of noninterest bearing promissory note payable to bearer on demand. The federal reserve note (*e.g.* one, five, ten, etc. dollar bill) is the most widely used paper currency. Such have replaced silver and gold certificates which were backed by silver and gold. Such reserve notes are direct obligations of the United States.

Federal Reserve System. Network of twelve central banks to which most national banks belong and to which state chartered banks may belong. Membership rules require investment of stock and minimum reserves. The Federal Reserve System was established in 1913 to give the country an elastic currency, provide facilities for discounting commercial paper and to improve the supervision of banking.

The System consists of five parts: the Board of Governors in Washington; the 12 Federal Reserve Banks, their branches and other facilities situated throughout the country; the Federal Open Market Committee; the Federal Advisory Council; and the member commercial banks, which include all national banks and State-chartered banks that have voluntarily joined the System.

Federal Rules Act. Act of 1934 granting U.S. Supreme Court power to adopt Federal Rules of Civil Procedure. *See* 28 U.S.C.A. §§ 2071, 2072. Additional power to prescribe rules is provided for by 28 U.S.C.A. § 2075 (Bankruptcy Rules), § 2072 (Evidence Rules) and 28 U.S.C.A. §§ 2071-2074 for other procedural rules for cases in U.S. district or courts of appeals.

Federal Rules Decisions. A unit of the National Reporter System which publishes federal court decisions which construe or apply the Federal Rules of Civil, Criminal and Appellate Procedure, as well as Federal

Rules of Evidence. Also included are articles relating to federal court practice and procedure.

Federal Rules of Appellate Procedure. These rules govern procedure in appeals to United States courts of appeals from the United States district courts and the Tax Court of the United States; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give. Certain states have adopted rules patterned on such federal rules to govern practice in their appellate courts.

Federal Rules of Civil Procedure. Body of procedural rules which govern all civil actions in U.S. District Courts and after which most states have modeled their own rules of civil procedure. These rules were promulgated by the U.S. Supreme Court in 1938 under power granted by Congress, and have since been frequently amended. Such rules also govern adversary proceedings in the bankruptcy courts; and, Supplemental Rules, in addition to main body of rules, govern admiralty and maritime actions. *See* 28 U.S.C.A. §§ 2071-2074.

Federal Rules of Criminal Procedure. Procedural rules which govern all criminal proceedings in the U.S. District Courts, and, where specified, before U.S. Magistrates. Such rules were promulgated by the U.S. Supreme Court in 1945 under power granted by Congress, and have since been frequently amended. Several states have adopted criminal procedural rules patterned on the federal criminal rules. *See* 28 U.S.C.A. §§ 2071-2074.

Federal Rules of Evidence. Rules which govern the admissibility of evidence at trials in the Federal District Courts and before U.S. Magistrates. Many states have adopted Evidence Rules patterned on these federal rules. *See* 28 U.S.C.A. §§ 2072-2074.

Federal statutes. *See* Federal Acts.

Federal Supplement. The Federal Supplement publishes opinions of the below listed federal courts:

1932-present

U.S. District Courts

1932-1960

U.S. Court of Claims

1949-present

U.S. Customs Court (vol. 135). (Renamed Court of International Trade in 1980)

See also Federal Reporter.

Federal Tort Claims Act. The government of the United States may not be sued in tort without its consent. That consent was given in the Federal Tort Claims Act (1946), which largely abrogated the federal government's immunity from tort liability and established the conditions for suits and claims against the federal government. The Act (28 U.S.C.A. §§ 1346(b), 2674) preserves governmental immunity with respect to the traditional

categories of intentional torts, and with respect to acts or omissions which fall within the "discretionary function or duty" of any federal agency or employee. *See also* Sovereign immunity.

Federal Trade Commission. Agency of the federal government created in 1914. The Commission's principal functions are to promote free and fair competition in interstate commerce through prevention of general trade restraints such as price-fixing agreements, false advertising, boycotts, illegal combinations of competitors and other unfair methods of competition. *See also* Clayton Act; Robinson-Patman Act; Sherman Antitrust Act.

Federation. A joining together of states or nations in a league or association; the league itself. *See also* Compact; Federal; Federal government; United States.

An unincorporated association of persons for a common purpose.

Fee. A charge fixed by law for services of public officers or for use of a privilege under control of government. *Fort Smith Gas Co. v. Wiseman*, 189 Ark. 675, 74 S.W.2d 789, 790. A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or perquisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done.

See also Base (*Base fee*); Commitment fee; License fee or tax; Poundage fees; Retainer.

Attorney fees. Charge to client for services performed (e.g. hourly fee, flat fee, contingency fee). Such fees must be "reasonable" (see e.g. Model Rules of Professional Conduct, Rule 1.5(a)). Numerous federal statutes provide for the award of attorney fees to the prevailing party; e.g., 25% of award in social security disability claim actions. *See Contingent fees, below; also, American rule; Equal Access to Justice Act; Fee splitting; Minimum fee schedules; Retainer; Suit (Suit money).*

Contingent fees. Arrangement between attorney and client whereby attorney agrees to represent client with compensation to be a percentage of the amount recovered; e.g., 25% if the case is settled, 30% if case goes to trial. Frequently used in personal injury actions. Such fee arrangements are often regulated by court rule or statute depending on the type of action and amount of recovery; and are not permitted in criminal cases (see, e.g., ABA, Model Rules of Professional Conduct, Rule 1.5(c), (d)).

Court fees. Those amounts paid to court or one of its officers for particular charges that typically are delineated by statute, such as docket fees, marshal's charges and witness fees. *Dickerson v. Pritchard*, D.C.Ark., 551 F.Supp. 306, 311. *See e.g.* 28 U.S.C.A. § 1911 et seq. *See also* Costs; Docket (*Docket fee*).

Docket fees. *See Court fees above; also* Docket.

Estates

An interest in land which (a) is or may become possessory; and (b) is ownership measured in terms of duration. Restatement of Property § 9. *See also* Fee simple.

Ordinarily, word "fee" or "fee simple" is applied to an estate in land, but term is applicable to any kind of hereditament, corporeal or incorporeal, and is all the property in thing referred to or largest estate therein which person may have. *In re Forsstrom*, 44 Ariz. 472, 38 P.2d 878, 888.

A freehold estate in lands, held of a superior lord, as a reward for services, and on condition of rendering some service in return for it. The true meaning of the word "fee" is the same as that of "feud" or "fief," and in its original sense it is taken in contradistinction to "allodium," which latter is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. 2 Bl.Comm. 105.

In modern English tenures, "fee" signifies an estate of inheritance, being the highest and most extensive interest which a man can have in a feud; and when the term is used simply, without any adjunct, or in the form "fee-simple," it imports an absolute inheritance clear of any condition, limitation, or restriction to particular heirs, but descendible to the heirs general, male or female, lineal or collateral. 2 Bl.Comm. 106.

Base fee. A determinable or qualified fee; an estate having the nature of a fee, but not a fee simple absolute.

Conditional fee. An estate restrained to some particular heirs, exclusive of others, *Blume v. Percy*, 204 S.C. 409, 29 S.E.2d 673, 674, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a "conditional fee," by reason of the condition expressed or implied in the donation of it that, if the donee died without such particular heirs, the land should revert to the donor. The term includes a fee that is either to commence or determine on some condition; and is sometimes used interchangeably with "base fee," that is, one to determine or be defeated on the happening of some contingent event or act.

Determinable fee. Also called a "base" or "qualified" fee. One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. An estate in fee which is liable to be determined by some act or event expressed on its limitation to circumscribe its continuance, or inferred by law as bounding its extent. An estate which may last forever is a "fee," but if it may end on the happening of a merely possible event, it is a "determinable," or "qualified fee."

Determinable fee or fee simple. Estate created with special limitation which delimits duration of estate in land.

Fee damages. *See* Damages.

Fee expectant. A name sometimes applied to an estate created where lands are given to a man and his wife and the heirs of their bodies. See also Frank-marriage.

Fee simple. See Fee simple.

Fee simple defeasible. Title created in trustees where legal title in fee simple to active trust estate is by will placed in trustees who are required to distribute property in fee simple upon happening of event. Also called a "determinable fee", "base fee", or "qualified fee". *Kanawha Val. Bank v. Hornbeck*, 151 W.Va. 308, 151 S.E.2d 694, 700.

Great fee. In feudal law, the designation of a fee held directly from the crown.

Knight's fee. See Knights fee.

Limited fee. An estate of inheritance in lands, which is clogged or confined with some sort of condition or qualification. Such estates are based on qualified fees, conditional fees, and fees-tail. The term is opposed to "fee-simple."

Plowman's fee. In old English law, was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.

Qualified fee. In English law, a fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. An interest given to a man and certain of his heirs at the time of its limitation.

Quasi fee. An estate gained by wrong.

Feed. To lend additional support; to strengthen *ex post facto*. Similarly, a subsequent title acquired by the mortgagor is said "to feed the mortgage."

Feeder organization. An entity that carries on a trade or business for the benefit of an exempt organization. However, such a relationship does not result in the feeder organization itself being tax-exempt. IRC § 502.

Fee-farm. A species of tenure, where land is held of another in perpetuity at a yearly rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the "*emphyteusis*" of the Roman law. Fealty, however, was incident to a holding in fee-farm, according to some authors.

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are

classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee.

Fee-farm rent. The rent reserved on granting a fee-farm. It might be one-fourth or one-third the value of the land. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple.

Fee interest. See Fee; Fee simple; Fee tail.

Fee simple. Typically, words "fee simple" standing alone create an *absolute* estate in devisee and such words followed by a condition or special limitation create a *defeasible* fee. *Babb v. Rand, Me.*, 345 A.2d 496, 498.

Absolute. A fee simple absolute is an estate limited absolutely to a person and his or her heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during one's life, and descending to one's heirs and legal representatives upon one's death intestate. Such estate is unlimited as to duration, disposition, and descendibility. *Slayden v. Hardin*, 257 Ky. 685, 79 S.W.2d 11, 12.

The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl.Comm. 106. The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a necessary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates. Fee-simple signifies a pure fee; an absolute estate of inheritance clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land.

Conditional. Type of transfer in which grantor conveys fee simply on condition that something be done or not done. A defeasible fee which leaves grantor with right of entry for condition broken, which right may be exercised by some action on part of grantor when condition is breached.

At common law an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De donis" converted all such estates into estates tail. 2 Bl.Comm. 110.

Defeasible. Type of fee grant which may be defeated on the happening of an event. An estate which may last forever, but which may end upon the occurrence or nonoccurrence of a specified event, is a "fee simple defeasible". *Newbern v. Barnes*, 3 N.C.App. 521, 165 S.E.2d 526, 530.

Determinable. A "fee simple determinable" is created by conveyance which contains words effective to create a fee simple and, in addition, a provision for automatic

expiration of estate on occurrence of stated event. *Selectmen of Town of Nahant v. U. S., D.C.Mass.*, 293 F.Supp. 1076, 1978.

Fee simple title. *See* Fee simple.

Fee splitting. Division of legal fees between attorney who handles matters and attorney who referred such to him or her. Referrals commonly occur when referring attorney lacks expertise, or experience to effectively handle the particular matter.

Fee tail. A freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee, and in which the regular and general succession of heirs at law is cut off. *Coleman v. Shoemaker*, 147 Kan. 689, 78 P.2d 905, 907.

An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. For the varieties and special characteristics of this kind of estate, *see* Tail, Estate in.

Fegangi /fəgʌnjaj/. In old English law, a thief caught while escaping with the stolen goods in his possession.

Fehmgerichte /fəymgərɪktə/. The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed by Jerome Bonaparte in 1811.

Feigned /fəjnd/. Fictitious; pretended; supposititious; simulated.

Feigned accomplice. One who pretends to consult and act with others in the planning or commission of a crime, but only for the purpose of discovering their plans and confederates and securing evidence against them. *See* Informer.

Feigned action. An action, now obsolete, brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true. It differs from *false action*, in which case the words of the writ are false. *See also* Feigned issue.

Feigned diseases. Simulated or pretended illness. Diseases are generally feigned from one of three causes,—fear, shame, or the hope of gain.

Feigned issue. A proceeding, now obsolete, whereby parties, by consent, could have matter determined by jury without actually bringing action. *See also* Feigned action.

FELA. *See* Federal Employer's Liability Act.

Felagus /fələygəs/. In Saxon law, one bound for another by oath; a sworn brother. A friend bound in the decenary for the good behavior of another. One who took the place of the deceased. Thus, if a person was murdered, the recompense due from the murderer went to the *felagus* of the slain, in default of parents or lord.

Feld. A field; in composition, wild.

Fele, feal. L. Fr. Faithful. *See* Feal.

Fellatio, n. A sexual act in which the mouth or lips come into contact with the penis. *See* Sodomy.

Fellow. A co-worker; a partaker or sharer of; a companion; one with whom we consort; one joined with another in some legal *status* or relation; a member of a college or corporate body.

Fellow-heir. A co-heir; partner of the same inheritance.

Fellow servant. One who works for and is controlled by the same employer; a co-worker. *Walsh v. Eubanks*, 183 Ark. 34, 34 S.W.2d 762, 764. Those engaged in the same type of work, under the control of a common employer. Employees who derive authority and compensation from the same common employer, and are engaged in the same general business. *Cactus Drilling Co. v. Williams*, Tex.Civ.App., 525 S.W.2d 902, 910. When persons are employed and paid by the same employer, and their duties are such as to bring them into such relation that negligence of one in doing his work may injure other in performance of his, then they are engaged in the same common businesses, and are "fellow servants." *See also* Employee; Fellow servant rule.

Fellow servant rule. A common law doctrine, now generally abrogated by workers' compensation acts and Federal Employers' Liability Act, that in an action for damages brought against an employer by an injured employee the employer may allege that the negligence of another fellow employee was partly or wholly responsible for the accident resulting in the injury and, thus reducing or extinguishing his own liability.

Felo de se /fələw dij si/. Killing of self; suicide.

Felon /fələn/. Person who commits or has committed a felony (*q.v.*).

Felonia /fələwniə/. Felony. The act or offense by which a vassal forfeited his fee. *Per feloniam*, with a criminal intention.

Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum /fələwniə, èks váj tármənaɪ, səgnífəkət kwódləbət kəpətéyliɪ kráymən féli-yow éxvɪtərmini pəpətrétəm/. Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.

Felonia implicatur in qualibet prodicione /fələwniə impləkétər in kwéyləbət prədishiyówni/. Felony is implied in every treason.

Felonice /fələwnəsi/. Feloniously.

Felonious /fə'lówn(i)yəs/. A technical word of law which means done with intent to commit crime, *i.e.* criminal intent. Of the grade or quality of a felony, as, for example, a felonious assault (*q.v.*). Malicious; villainous; traitorous; malignant. Proceeding from an evil heart or purpose. Wickedly and against the admonition of the law; unlawfully. *See also* Felony; Feloniously.

Felonious assault. Such an assault upon the person as, if consummated, would subject the party making it, upon conviction, to the punishment of a felony, that is, to imprisonment. Aggravated assault as contrasted with simple assault. *See also* Assault.

Felonious entry. Type of statutory burglary. *See* Burglary.

Felonious homicide. Killing of human being without justification or excuse. *See* Homicide; Manslaughter; Murder; Premeditation.

Felonious intent. An act of the will in which one forms a desire to commit a felony. As applied to crime of larceny, the intent which exists where a person knowingly takes and carries away the personal property of another without any claim or pretense of right with the intent wholly and permanently to deprive the owner of his property. *State v. Perry*, 21 N.C.App. 478, 204 S.E.2d 889, 891.

Feloniously. Of, pertaining to, or having, the quality of felony. Proceeding from an evil heart or purpose; done with a deliberate intention of committing a crime. *Golden v. Commonwealth*, 245 Ky. 19, 53 S.W.2d 185, 186. Without color of right or excuse. Malignantly; maliciously. Acting with a felonious intent; *i.e.* acting with intent to commit a felony. *See also* Felonious.

Felonious taking. As used in the crimes of larceny and robbery, it is the taking with intent to steal.

Felony. A crime of a graver or more serious nature than those designated as misdemeanors; *e.g.*, aggravated assault (felony) as contrasted with simple assault (misdemeanor). Under many state statutes, any offense punishable by death or imprisonment for a term exceeding one year. *See, e.g.*, Model Penal Code § 1.04(2); 18 U.S.C.A. § 1. The federal and many state criminal codes define felony status crimes, and in turn also have various classes of felonies (*e.g.*, Class A, B, C, etc.) or degrees (*e.g.*, first, second, third) with varying sentences for each class. *See, e.g.*, 18 U.S.C.A. § 3559; Model Penal Code § 6.01.

At common law, an offense occasioning total forfeiture of either land or goods to which capital or other punishment might be superadded according to degree of guilt. At early common law the term was applied to describe the more serious offenses cognizable in the royal courts, conviction for which entailed forfeiture of life, limb and chattels and escheat of lands to the felon's lord after a year and a day in the king's hands. Subsequently, however, the classification was so greatly enlarged that many offenses not involving moral turpitude were included therein. In *re Donegan*, 282 N.Y. 285, 26 N.E. 260, 261. This term meant originally the state of hav-

ing forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to capital or any other punishment prescribed by law; as distinguished from a "misdemeanor," upon conviction for which no forfeiture followed. In feudal law, the term meant an act or offense on the part of the vassal, which cost him his fee, or in consequence of which his fee fell into the hands of his lord; that is, became forfeited. (*See* Felonia.) Perfidy, ingratitude, or disloyalty to a lord.

Felony, compounding of. *See* Compounding crime.

Forcible felony. Forcible felony includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

Misprision of felony. *See* Misprision.

Reducible felony. A felony upon conviction of which the offender may be punished as for a misdemeanor, upon recommendation of the jury.

Felony murder doctrine. At common law, one whose conduct brought about an unintended death in the commission or attempted commission of a felony was guilty of murder (*e.g.* a homicide committed during an armed robbery). While some states still follow the common law rule, today the law of felony murder varies substantially throughout the country, largely as a result of efforts to limit the scope of the rule. Jurisdictions have limited the rule in one or more of the following ways: (1) by permitting its use only as to certain types of felonies; (2) by more strict interpretation of the requirement of proximate or legal cause; (3) by a narrower construction of the time period during which the felony is in the process of commission; (4) by requiring that the underlying felony be independent of the homicide. *See e.g.* Model Penal Code § 210.2.

Female. The sex which conceives and gives birth to young. Also a member of such sex. The term is generic, but may have the specific meaning of "woman," if so indicated by the context.

Feme, femme /fém/. L. Fr. A woman. Also, a wife, as in the phrase "*baron et feme*".

Feme covert /fém kóvərt/. A married woman. Generally used in reference to the former legal disabilities of a married woman, as compared with the condition of a *feme sole*.

Feme sole /fém sówl/. A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and, for most purposes, those women who are judicially separated from their husbands.

Feme sole trader /fém sówl tréydər/. In old English law, a married woman, who, by the custom of London, trades on her own account, independently of her husband; so called because, with respect to her trading, she is the same as a *feme sole*. The term is applied also to

women deserted by their husbands, who do business as *femes sole*.

Femicide /féməsàyd/. The killing of a woman. One who kills a woman.

Feminine /fémənən/. Of or belonging to females.

Femme couleur libre /fám küwlór líybrə/. Up to the time of Civil War, term applied to all persons not of the white race, including Indians.

Fence, n. A hedge, structure, or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. An enclosure about a field or other space, or about any object; especially an enclosing structure of wood, iron or other materials, intended to prevent intrusion from without or straying from within.

A colloquial characterization of a receiver of stolen property; one who receives and sells stolen goods. See Receiving stolen goods or property.

Fence county. A county where the stock law has not been adopted. *McKenzie v. Powell*, 68 Ga.App. 285, 22 S.E.2d 735, 736.

Fence-month, or defense-month. In old English law, a period of time, occurring in the middle of summer, during which it was unlawful to hunt deer in the forest, that being their fawning season. Probably so called because the deer were then *defended* from pursuit or hunting.

Fencing patents. Patents procured in an effort to broaden the scope of the invention beyond the article or process which is actually intended to be manufactured or licensed. *Special Equipment Co. v. Coe*, 79 U.S.App. D.C. 133, 144 F.2d 497, 499.

Feneration /fènréyshən/. Usury; the gain of interest; the practice of increasing money by lending. Sometimes applied to interest on money lent. See Interest.

Fengeld /fèngèld/. In Saxon law, a tax or imposition, exacted for the repelling of enemies.

Fenian /fìyniyən/. A champion, hero, giant. This word, in the plural, is generally used to signify invaders or foreign spoilers. A member of an organization of persons of Irish birth, resident in the United States, Canada, and elsewhere, having for its aim the overthrow of English rule in Ireland.

Feod /fyúwd/. The same as *feud* or *fief*. 2 Bl.Comm. 45.

Feodal /fyúwdəl/. Belonging to a fee or feud; feudal. More commonly used by the old writers than *feudal*.

Feodal actions /fyúwdəl ékshənz/. Real actions. 3 Bl.Comm. 117.

Feodality /fyúwdələdiy/. Fidelity or fealty. See Fealty.

Feodal system /fyúwdəl sistəm/. See Feudal system.

Feodarum (or feudaram) consuetudines /fyúwdérəm kónswət(y)úwdəniəz/. The customs of feuds. The name of a compilation of feudal laws and customs made at Milan in the twelfth century. It is the most ancient

work on the subject, and was always regarded, on the continent of Europe, as possessing the highest authority.

Feodary /fyúwdəriy/. In England, an officer of the court of wards, appointed by the master of that court, under 32 Hen. VIII, c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the king's widows their dower; and received all the rents, etc.

Feodatory, or feudatory /fyúwdət(ə)riy/. In feudal law, the grantee of a *feod*, *feud*, or fee; the vassal or tenant who held his estate by feudal service. Blackstone uses "*feudatory*." 2 Bl.Comm. 46.

Feodi firma /fyúwdəy fírmə/. In old English law, fee-farm (*q.v.*).

Feodi firmarius /fyúwdəy fərməriyəs/. The lessee of a fee-farm.

Feodum /fyúwdəm/. This word (meaning a feud or fee) is the one most commonly used by the older English law-writers, though its equivalent, "*feudum*" (*q.v.*), is used generally by the more modern writers and by the *feudal* law-writers. There were various classes of *feoda*, among which may be enumerated the following: *Feodum laicum*, a lay fee. *Feodum militare*, a knight's fee. *Feodum improprium*, an improper or derivative fee. *Feodum proprium*, a proper and original fee, regulated by the strict rules of feudal succession and tenure. *Feodum simplex*, a simple or pure fee; fee-simple. *Feodum talliatum*, a fee-tail.

In old English law, a seigniorship or jurisdiction. A fee, a perquisite or compensation for a service.

Feodum antiquum /fyúwdəm æntáykwəm/. A feud which devolved upon a vassal from his intestate ancestor.

Feodum est quod quis tenet ex quacunq̄ue causa sive sit tenementum sive redditus /fyúwdəm èst kwòd kwis ténət èks kweykòkwiy kòzə sáyviy sit tenéméntəm sáyviy rédətəs/. A fee is that which any one holds from whatever cause, whether tenement or rent.

Feodum nobile /fyúwdəm nówbəliy/. A fief for which the tenant did guard and owed homage.

Feodum novum /fyúwdəm nóvwəm/. A feud acquired by a vassal himself.

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura /fyúwdəm símpleks kwáyə fyúwdəm áydəm èst kwòd hərədətəs, et símpleks áydəm èst kwòd ləjídəməm vèl pyúrəm; et sík fyúwdəm símpleks áydəm èst kwòd hərədətəs ləjítəmə vèl hərədətəs pyúrə/. A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or pure; and thus fee-simple is the same as a lawful inheritance, or pure inheritance.

Feodum talliatum, *i.e.*, **hæreditas in quamdam certitudinem limitata** /fyúwdəm tæliyédəm, id ést, hærydætæs in kwóndəm sàrtət(y)úwdənəm limətéytə/. Fee-tail, *i.e.*, an inheritance limited in a definite descent.

Feoffamentum /fjy(ə)fəméntəm/. A feoffment.

Feoffare /fjy(ə)fériy/. To enfeoff; to bestow a fee. The bestower was called "feoffator," and the grantee or feoffee, "feoffatus."

Feoffator /fjy(ə)féytər/. In old English law, a feoffer or feoffor; one who gives or bestows a fee; one who makes a feoffment.

Feoffatus /fjy(ə)féytəs/. In old English law, a feoffee; one to whom a fee is given, or a feoffment made.

Feoffee /fæfjy/fjyfjy/. He to whom a fee is conveyed.

Feoffee to uses /fæfjy tə yúwsəz/fjyfjy/. A person to whom land was conveyed for the use of a third party. (The latter was called "cestui que use.") One holding the same position with reference to a use that a trustee does to a trust. He answers to the *hæres fiduciarius* of the Roman law.

Feoffment /féfment/fjyf/. The gift of any corporeal hereditament to another, operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed, which might be accomplished either by investiture or by livery of seisin. A gift of a freehold interest in land accompanied by livery of seisin. The essential part is the livery of seisin. Also the deed or conveyance by which such corporeal hereditament is passed.

A feoffment originally meant the grant of a *feud* or *fee*; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffer. By custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm.

Feoffment to uses /féfment tə yúwsəz/fjyf/. A feoffment of lands to one person to the use of another. In such case the feoffee was bound in conscience to hold the lands according to the use, and could himself derive no benefit. Sometimes such feoffments were made to the use of the feoffer. The effect of such conveyance was entirely changed by the statute of uses.

Feoffment with livery of seisin. An early English method of conveyance by which the transferor met the transferee at or near the land to be transferred and handed over a twig or clod while reciting to witnesses that the transfer was being made.

Feoffor /féfər/fjyfər/. The person making a feoffment, or enfeoffing another in fee.

Feoh /fjy/. This Saxon word meant originally cattle, and thence property or money, and, by a second transi-

tion, wages, reward, or fee. It was probably the original form from which the words "feod," "feudum," "fief," "feu," and "fee" (all meaning a feudal grant of land) have been derived.

Feorme /fórm/. A certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter.

Feræ bestia /fíry béstiyiy/. Wild beasts.

Feræ natura /fíry nətyúryiy/. Lat. Of a wild nature or disposition. Animals which are by nature wild are so designated, by way of distinction from such as are naturally tame, the latter being called "*domita natura*."

FERC. See Federal Energy Regulatory Commission.

Ferdella terræ /fərdélə téhryiy/. A fardel-land; ten acres; or perhaps a yard-land.

Ferdfare. Sax. A summons to serve in the army. An acquittance from going into the army.

Ferdingus. A term denoting, apparently, a freeman of the lowest class, being named after the *cotseti*.

Ferdwite. In Saxon law, an acquittance of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition.

Feria /fíryə/. In old English law, a weekday; a holiday; a day on which process could not be served; a fair; a ferry.

Feria /fíryiy/. In Roman law, holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their lawsuits, and during which slaves enjoyed a cessation from labor.

All *feriæ* were thus *dies nefasti*. All *feriæ* were divided into two classes,—"*feriæ publicæ*" and "*feriæ privatae*." The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors.

Numerous festivals were called by this name in the early Roman empire. In the later Roman empire the single days occurring at intervals of a week apart, commencing with the seventh day of the ecclesiastical year, were so called.

Ferial days /fíryəl déyz/. Originally and properly, days free from labor and pleading; holidays.

Ferita /féhrədə/. In old European law, a wound; a stroke.

Ferling /fərlɪŋ/. In old records, the fourth part of a penny; also the quarter of a ward in a borough.

Ferlingata /fərlɪŋgéytə/. A fourth part of a yard-land.

Ferlingus, or **ferlingum** /fərlɪŋgəs, fərlɪŋgəm/. A furlong.

Ferm, or **fearm** /fərm, fárm/. A house or land, or both, let by lease.

Ferme /fərm, fárm/. A farm; a rent; a lease; a house or land, or both, taken by indenture or lease.

Fermentation. A decomposition produced in an organic substance by the physiological action of a living organism, or by certain unorganized agents.

Fermented liquors. Beverages produced by, or which have undergone, a process of alcoholic fermentation, to which they owe their intoxicating properties, including beer, wine, hard cider, and the like, but not spirituous or distilled liquors.

Fermer, fermor /fármær, fármær/. A lessee; a farmer. One who holds a term, whether of lands or an incorporeal right, such as customs or revenue.

Fermier /fèrmyéy/. In French law, one who farms any public revenue.

Fermisona. In old English law, the winter season for killing deer.

Fermory /fármæry, fármæry/. In old records, a place in monasteries, where they received the poor (*hospicio excipiebant*), and gave them provisions (*ferm, firma*). Hence the modern *infirmary*, used in the sense of a hospital.

Fernigo. In old English law, a waste ground, or place where fern grows.

Ferrator. A farrier (*q.v.*).

Ferri /féhray/. In the civil law, to be borne; that is on or about the person. This was distinguished from *portari* (to be carried), which signified to be carried on an animal.

Ferriage /féhriyæj/. The toll or fare paid for the transportation of persons and property across a ferry. Literally speaking, it is the price or fare fixed by law for the transportation of the traveling public, with such goods and chattels as they may have with them, across a river, bay, or lake.

Ferry. Commercial transportation of people, vehicles, goods, etc. across body of water. Also, boat or vessel used in such transportation. In law it is treated as a franchise, and defined as the exclusive right to carry passengers and freight across a river, lake or arm of the sea, or to connect a continuous line of road leading from one side of the water to the other. Canadian Pac. Ry. Co. v. U. S., C.C.A.Wash., 73 F.2d 831, 832.

A continuation of the highway from one side of the water over which it passes to the other, for transportation of passengers or of travelers with their vehicles and such other property as they may carry or have with them. U. S. v. Puget Sound Nav. Co., D.C.Wash., 24 F.Supp. 431, 432.

A liberty to have a boat on a stream, river, arm of the sea, lake, or other body of water for the transportation of passengers and vehicles with their contents, for a reasonable toll. Sometimes limited to the landing place. State Highway Commission v. Smith, 250 Ky. 269, 62 S.W.2d 1044.

Whether a boat is a "ferry" and comprises a continuous part of the road or highway depends on length of run, type of ship, whether it was operated under state franchise or federal certificate of convenience, whether it was equipped to carry cargo, extent to which service

to passengers is emphasized and extent to which its use is necessitated by lack of land transportation. Alaska S. S. Co. v. Federal Maritime Commission, C.A.Wash., 399 F.2d 623, 628.

A *public* ferry is one to which all the public have the right to resort, for which a regular fare is established, and the ferryman is a common carrier, bound to take over all who apply, and bound to keep his ferry in operation and good repair.

A *private* ferry is one mainly for the use of the owner, and though he may take pay for ferriage, he does not follow it as a business. His ferry is not open to the public at its demand, and he may or may not keep it in operation.

Ferry franchise. The public grant of a right to maintain a ferry at a particular place; a right conferred to land at a particular point and secure toll for the transportation of persons and property from that point across the stream. A grant to a named person empowering him to continue an interrupted land highway over the interrupting waters. U. S. v. Puget Sound Nav. Co., D.C.Wash., 24 F.Supp. 431, 432.

Ferryman. One employed in taking persons across a lake, river or stream, in boats or other vessels, at a ferry.

Festa in cappis /fèstə in kápəs/. In old English law, grand holidays, on which choirs wore caps.

Festinatō justitiæ est noverca infortunii /fèst-tənáysh(iy)ow jèstíshiyiy èst nòvèrkə infòrtuyúnnyay/. Hasty justice is the stepmother of misfortune.

Festing-man. In old English law, a bondsman; a surety; a frank-pledge, or one who was surety for the good behavior of another. Monasteries enjoyed the privilege of being "free from festing-men," which means that they were "not bound for any man's forthcoming who should transgress the law." See Frank-pledge.

Festing-penny. Earnest given to servants when hired or retained.

Festinum remedium /fèstənəm rəmiydíyəm/. Lat. A speedy remedy. A term applied to those cases where the remedy for the redress of an injury is given without any unnecessary delay. The action of dower is *festinum remedium*. The writ of assise was also thus characterized (in comparison with the less expeditious remedies previously available) by the statute of Westminster 2 (13 Edw. I, c. 24.)

Festuca /fèstyúwkə/. In Frankish law, a rod or staff or (as described by other writers) a stick, on which imprecatory runs were cut, which was used as a gage or pledge of good faith by a party to a contract, or for symbolic delivery in the conveyance or quit-claim of land, before a court of law, anterior to the introduction of written documents by the Romans.

Festum /fèstəm/. A feast, holiday, or festival. *Festum stultorum* /fèstəm stàltòrəm/, the feast of fools.

Fetal death. The death of a child not yet born. Death in utero of a fetus weighing 500 grams or more. This

weight corresponds roughly to a fetus of twenty weeks or more (gestational age), *i.e.* a viable fetus.

Death is defined in the following context: after expulsion, the fetus does not breathe or show any other evidence of life, such as the beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

Feticide /fyt̩əsəyd/. Destruction of the fetus; the act by which criminal abortion is produced. The killing of an unborn child. *State v. Horne*, 282 S.C. 444, 319 S.E.2d 703, 704. *See also* Abortion; Prolicide.

Fettering. The act of shackling or placing manacles on another.

Fetters /fēt̩ərz/. Chains or shackles for the feet; irons used to secure the legs of convicts, unruly prisoners, etc. Similar chains securing the wrists are called "hand-cuffs".

Fetus /fyt̩əs/. An unborn child. The unborn offspring of any viviparous animal; specifically the unborn offspring in the post embryonic period after major structures have been outlined (in man from seven or eight weeks after fertilization until birth).

Feud. *Feudal law*. An estate in land held of a superior on condition of rendering him services. 2 Bl.Comm. 105. An inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the property in the lands.

In this sense the word is the same as "feod", "feodum", "feudum", "fief", or "fee".

Saxon and old German law. An enmity, or species of private war, existing between the family of his slayer. In Scotland and the north of England, a combination of all the kin to revenge the death of any of the blood upon the slayer and all his race. *See* Faida.

Feuda /fyúwdə/. Feuds or fees.

Feudal /fyúwdəl/. Pertaining to feuds or fees; relating to or growing out of the feudal system or feudal law; having the quality of a feud, as distinguished from "allodial."

Feudal actions. An ancient name for real actions, or such as concern real property only. 3 Bl.Comm. 117.

Feudal courts. In the 12th century a lord *qua* lord had the right to hold a court for his tenants. In the 13th century, they became of less importance for three reasons: The feudal principle would have led to a series of courts one above the other, and the dominions of the large landowners were usually scattered, so that great feudal courts became impossible. The growth of the jurisdiction of the king's court removed the necessity for feudal courts. All the incidents of the feudal system came to be regarded in a commercial spirit—as property. Its jurisdiction became merely appendant to landowning.

Feudalism. The feudal system; the aggregate of feudal principles and usages. The social, political, and econom-

ic system that dominated the major European nations between the ninth and fifteenth centuries. The system was based upon a servile relationship between a "vassal" and a "lord." The vassal paid homage and service to the lord and the lord provided land and protection to the vassal. *See also* Feudal system.

Feudalize /fyúwdələyz/. To reduce to a feudal tenure; to conform to feudalism.

Feudal law. The body of jurisprudence relating to feuds; the real-property law of the feudal system; the law anciently regulating the property relations of lord and vassal, and the creation, incidents, and transmission of feudal estates.

The body of laws and usages constituting the "feudal law" was originally customary and unwritten, but a compilation was made in the twelfth century, called "Feodorum Consuetudines," which has formed the basis of later digests. The feudal law prevailed over Europe from the twelfth to the fourteenth century, and was introduced into England at the Norman Conquest, where it formed the entire basis of the law of real property until comparatively modern times. Survivals of the feudal law, to the present day, so affect and color that branch of jurisprudence as to require a certain knowledge of the feudal law in order to better comprehend modern tenures and rules of real-property law.

See also Feudal system.

Feudal possession. The equivalent of "seisin" under the feudal system.

Feudal system. The system of feuds. A political and social system which prevailed throughout Europe during the eleventh, twelfth, and thirteenth centuries, and is supposed to have grown out of the peculiar usages and policy of the Teutonic nations who overran the continent after the fall of the Western Roman Empire, as developed by the exigencies of their military domination, and possibly furthered by notions taken from the Roman jurisprudence.

It was introduced into England, in its completeness, by William I, A.D. 1085, though it may have existed in a rudimentary form among the Saxons before the Conquest. It formed the entire basis of the real-property law of England in medieval times; and survivals of the system, in modern days, so modify and color that branch of jurisprudence, both in England and America, that many of its principles require for their complete understanding a knowledge of the feudal system. The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of *land* from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services; while, by tying men to the land and to those holding above and below them, it created a close-knit hierarchy of persons, and developed an aggregate of social and political institutions.

Feudal tenures. The tenures of real estate under the feudal system, such as knight-service, socage, villenage, etc.

Feudary /fyúwdəriy/. A tenant who holds by feudal tenure (also spelled "feodatory" and "feudatory"). Held by feudal service. Relating to feuds or feudal tenures.

Feudbote /fyúwdbòwt/. A recompense for engaging in a feud, and the damages consequent, it having been the custom in ancient times for all the kindred to engage in their kinsman's quarrel.

Feude /fyúwd/. An occasional early form of "feud" in the sense of private war or vengeance. *See* Feud.

Feudist /fyúwdəst/. A writer on feuds, as Cujacius.

Feudo /feyúwðow/. In Spanish law, feud or fee.

Feudorum liber /fyúwdórəm láybər/. The Books of Feuds. A compilation of feudal law, prepared by order of the emperor Frederick I, and published at Milan in 1170. It comprised five books, of which only the first two are now extant with fragmentary portions of the others, printed at the end of modern editions of the *Corpus Juris Civilis*.

Feudorum libri /fyúwdórəm láybray/. The Books of Feuds published during the reign of Henry III, about the year 1152. The particular customs of Lombardy as to feuds began about the year 1152 to be the standard of authority to other nations by reason of the greater refinement with which that branch of learning had been there cultivated. This compilation was probably known in England, but does not appear to have had any other effect than to influence English lawyers to the more critical study of their own tenures, and to induce them to extend the learning of real property so as to embrace more curious matter of similar kind.

Feudum /fyúwdəm/. L. Lat. A feud, fief, or fee. A right of using and enjoying forever the lands of another, which the lord grants on condition that the tenant shall render fealty, military duty, and other services. It is not properly the land, but a right in the land.

This form of the word is used by the feudal writers. The earlier English writers generally prefer the form *feodum*. There was an older word *feum*. Its use by the Normans is exceedingly obscure. "Feudal" was not in their vocabulary. Usually it denoted a stretch of land, rarely a tenure or mass of rights. It came to be applied to every person who had heritable rights in land.

Feudum antiquum /fyúwdəm æntáykwəm/. An ancient feud or fief; a fief descended to the vassal from his ancestors. 2 Bl.Comm. 212, 221. A fief which ancestors had possessed for more than four generations.

Feudum apertum /fyúwdəm əpértəm/. An open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone or where the tenant committed a crime, or gave other legal cause.

Feudum francum /fyúwdəm fræŋkəm/. A free feud. One which was noble and free from talliage and other

subsidies to which the *plebeia feuda* (vulgar feuds) were subject.

Feudum hauberticum /fyúwdəm hobórtəkəm/. A fee held on the military service of appearing fully armed at the *ban* and *arriere ban*.

Feudum improprium /fyúwdəm imprówpriyəm/. An improper or derivative feud or fief.

Feudum individuum /fyúwdəm indəvidyuwəm/. An indivisible or impartible feud or fief; descendible to the eldest son alone.

Feudum laicum /fyúwdəm léyəkəm/. A lay fee.

Feudum ligium /fyúwdəm lijijəm/. A liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 Bl.Comm. 367.

Feudum maternum /fyúwdəm mətárnəm/. A maternal fief; a fief descended to the feudatory from his mother. 2 Bl.Comm. 212.

Feudum militare /fyúwdəm milatériy/. A knight's fee, held by knight service and esteemed the most honorable species of tenure. 2 Bl.Comm. 62.

Feudum nobile /fyúwdəm nówbəliy/. A fee for which the tenant did guard and owed fealty and homage.

Feudum novum /fyúwdəm nówvəm/. A new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. 2 Bl.Comm. 212.

Feudum novum ut antiquum /fyúwdəm nówvəm ət æntáykwəm/. A new fee held with the qualities and incidents of an ancient one. 2 Bl.Comm. 212.

Feudum paternum /fyúwdəm pətárnəm/. A fee which the paternal ancestors had held for four generations. One descendible to heirs on the paternal side only. 2 Bl.Comm. 223. One which might be held by males only.

Feudum proprium /fyúwdəm prówpriyəm/. A proper, genuine, and original feud or fief; being of a purely military character, and held by military service. 2 Bl.Comm. 57, 58.

Feudum talliatum /fyúwdəm təliyéytəm/. A restricted fee. One limited to descend to certain classes of heirs. 2 Bl.Comm. 112, note.

Feu et lieu /fyúw èy lyúw/. Fr. In old French and Canadian law, hearth and home. A term importing actual settlement upon land by a tenant.

Feu holding /fyúw hówldiŋ/. A holding by tenure of rendering grain or money in place of military service.

Feum /fiyəm/. An older form of *feudum*.

Few. Not many; of small number. U. S. v. Margolis, C.C.A.N.J., 138 F.2d 1002, 1003. An indefinite expression for a small or limited number. Indicating a small number of units or individuals which constitute a whole. A relative term of great elasticity of meaning.

Ff. A Latin abbreviation for "Fragmenta," designating the Digest or Pandects in the *Corpus Juris Civilis* of Justinian; so called because that work is made up of

fragments or extracts from the writings of numerous jurists.

F.G.A. In marine insurance means: "Free from general average"; also, sometimes, "foreign general average." The precise meaning of this abbreviation must be gathered from the context. *See* Average; General average contribution.

FHA. *See* Federal Housing Administration.

FHLB. *See* Federal Home Loan Banks.

FHLMC. *See* Federal Home Loan Mortgage Corporation.

Fiancer. L. Fr. To pledge one's faith.

Fianza /fiyánsə/. Sp. In Spanish law, trust, confidence, and correlatively a legal duty or obligation arising therefrom. The term is sufficiently broad in meaning to include both a general obligation and a restricted liability under a single instrument. But in a special sense, it designates a surety or guarantor, or the contract or engagement of suretyship; the contract by which one person engages to pay the debt or fulfil the obligations of another if the latter should fail to do so.

Fiat /fáyæt, fáyət/. (Lat. "Let it be done.") In old English practice, a short order or warrant of a judge or magistrate directing some act to be done; an authority issuing from some competent source for the doing of some legal act.

One of the proceedings in the English bankruptcy practice, being a power, signed by the lord chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. By the statute 12 & 13 Vict., c. 116, fiats were abolished.

Arbitrary or authoritative order or decision.

Joint fiat. In old English law, a fiat in bankruptcy, issued against two or more trading partners.

Fiat justitia /fáyət jəstish(iy)ə/. Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, "*Fiat justitia*," and then the writ of error is made out, etc.

Fiat justitia, ruat cœlum /fáyət jəstish(iy)ə, rúwət síyləm/. Let right be done, though the heavens should fall.

Fiat money. Paper currency not backed by gold or silver.

Fiat prout fieri consuevit (nil temere novandum) /fáyət prówət fáyəray kənswiývət, nil téməriy nəvəndəm/. Let it be done as it hath used to be done (nothing must be rashly innovated).

Fiat ut petitur /fáyəd ət pətətər/. Let it be done as it is asked. A form of granting a petition.

Fiaunt /fáyənt/. An order; command. *See* Fiat.

FICA. Federal Insurance Contributions Act (*q.v.*) The law that sets "Social Security" taxes and benefits.

Fictio /fiksh(iy)ow/. In Roman law, a fiction; an assumption or supposition of the law. Such was properly

a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction.

Fictio cedit veritati. Fictio juris non est ubi veritas /fiksh(iy)ow siýdət vèhrətétay. fiksh(iy)ow júrés nón èst yúwbay vèhrətəs/. Fiction yields to truth. Where there is truth, fiction of law exists not.

Fictio est contra veritatem, sed pro veritate habetur /fiksh(iy)ow èst kóntrə vèhrətétəm, séd prów vèhrətétiy həbiýdər/. Fiction is against the truth, but it is to be esteemed truth.

Fictio juris non est ubi veritas /fiksh(iy)ow júrés nón èst yúwbay vèhrətəs/. Where truth is, fiction of law does not exist.

Fictio legis inique operatur alicui damnum vel injuriam /fiksh(iy)ow líýjəs inəkwiý òpəréýtər ələk(yúw)ýay dəmnəm vèl injúriýəm/. A legal fiction does not properly work loss or injury. Fiction of law is wrongful if it works loss or injury to anyone.

Fictio legis neminem lædit /fiksh(iy)ow líýjəs némənəm líýdət/. A fiction of law injures no one. 3 Bl.Comm. 43.

Fiction of law. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption, for purposes of justice, of a fact that does not or may not exist. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. *Ryan v. Motor Credit Co.*, 30 N.J.Eq. 531, 23 A.2d 607, 621.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character.

See also Legal fiction.

Estoppels distinguished. Fictions are to be distinguished from estoppels; an estoppel being the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

Presumptions distinguished. Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted. It may also be said that a presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Fictitious. Founded on a fiction; having the character of a fiction; pretended; counterfeit. Feigned, imaginary, not real, false, not genuine, nonexistent. Arbitrarily invented and set up, to accomplish an ulterior object.

Fictitious action. An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. *See* Declaratory judgment; Feigned action; Feigned issue.

Fictitious name. A counterfeit, alias, feigned, or pretended name taken by a person, differing in some essential particular from his true name (consisting of Christian name and patronymic), with the implication that it is meant to deceive or mislead. *See also* Alias.

Fictitious payee. Negotiable instrument is drawn to fictitious payee whenever payee named in it has no right to it, and its maker does not intend that such payee shall take anything by it; whether name of payee used by maker is that of person living or dead or one who never existed is immaterial. *Goodyear Tire & Rubber Co. of California v. Wells Fargo Bank & Union Trust Co.*, 1 Cal.App.2d 694, 37 P.2d 483. The test is not whether the named payee is "fictitious" but whether the signer intends that he shall have no interest in the instrument. U.C.C. § 3-405.

Fictitious plaintiff. A person appearing in the writ, complaint, or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party.

Fictitious promise. *See* Promise.

Fide-commissary /fáydiy kóməsəhriy/. A term derived from the Latin "*fidei-commissarius*," and occasionally used by writers on equity jurisprudence as a substitute for the law French term "*cestui que trust*," as being more elegant and euphonious. *See* *Brown v. Brown*, 83 Hun. 160, 31 N.Y.S. 650.

Fidei-commissarius /fáydiyay kóməsəriyəs/. In the civil law, this term corresponds nearly to our "*cestui que trust*." It designates a person who has the real or beneficial interest in an estate or fund, the title or administration of which is temporarily confided to another.

Fidei-commissum /fáydiyay kəmisəm/. In the civil law, a species of trust; being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. Elements of "fidei commissum" are that donee or legatee is invested with title and charged or directed to convey it to another or to make particular disposition of it. *Succession of Abraham*, La.App., 136 So.2d 471, 478.

Fide-jubere /fáydiy jəbiri/ fáydiy júwbiy? fáydiy júwbiyow/. In the civil law, to order a thing upon one's faith; to pledge one's self; to become surety for another.

Fide-jubes? Fide-jubeo: Do you pledge yourself? I do pledge myself. One of the forms of stipulation.

Fide-jussio /fáydiy jəsh(i)yow/. An act by which any one binds himself as an additional security for another. This giving security does not destroy the liability of the principal, but adds to the security of the surety.

Fide-jussor /fáydiy jəsər/. In Roman law, a guarantor; one who becomes responsible for the payment of another's debt, by a stipulation which binds him to discharge it if the principal debtor fails to do so. 3 Bl.Comm. 108. He differs from a co-obligor in this, that the latter is equally bound to a debtor, with his principal, while the former is not liable till the principal has failed to fulfil his engagement. The obligation of the fide-jussor was an accessory contract; for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated "*fide jussors*." 3 Bl.Comm. 108.

Fidelitas /fədilyətəs/. Fealty; fidelity. *See* Fealty.

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum /fədélstəs. Diy nəlów tènəméntow, kwód tənityər əd tórmonəm, fit hóméyjiyay; fit təmən fədélétéytəs səkraméntəm/. Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

Fidelity and guaranty insurance. A contract of fidelity or guaranty insurance is one whereby the insurer, for a valuable consideration, agrees, subject to certain conditions, to indemnify the insured against loss consequent upon the dishonesty or default of a designated person. Guaranty insurance, used in its broad sense, also includes credit insurance, and title insurance, as well as the numerous forms of surety bonds.

The contract partakes of the nature both of insurance and of suretyship. Hence, even in the absence of terms so providing, the contract is avoided by the failure of the insured to disclose to the insurer, at the time of making the contract, any known previous acts of dishonesty on the part of the employee, or any dishonest practices that may occur during the currency of the policy. But the insured is not required to give notice of mere irregularities not involving moral turpitude; nor, in the absence of agreement to that effect, does the insured owe to the insurer any duty of watching the conduct and accounts of the employee concerned.

Fidelity bond. Contract of fidelity insurance. *Runcie v. Corn Exchange Bank Trust Co.*, Sup., 6 N.Y.S.2d 616, 620. A guaranty of personal honesty of officer furnishing indemnity against his defalcation or negligence. *Phillips v. Board of Education of Pineville*, 283 Ky. 173, 140 S.W.2d 819, 822. A contract whereby, for a consideration, one agrees to indemnify another against loss arising from the want of honesty, integrity, or fidelity of an employee or other person holding a position of trust. *Liberty Mut. Ins. Co. v. Thunderbird Bank*, 25 Ariz.App. 201, 542 P.2d 39, 41. *See also* Bond; Fidelity and guaranty insurance; Insurance.

Fidelity insurance. See Fidelity and guaranty insurance; Insurance.

Fidem mentiri /fáyðəm mèntáray/. Lat. To betray faith or fealty. A term used in feudal and old English law of a feudatory or feudal tenant who does not keep that fealty which he has sworn to the lord.

Fide-promissor /fáydiy prémisər/. See Fide-jussor.

Fides /fáydiy/. Lat. Faith; honesty; confidence; trust; veracity; honor. Occurring in the phrases "*bona fides*" (good faith), "*mala fides*" (bad faith), and "*uberri-ma fides*" (the utmost or most abundant good faith).

Fides est obligatio conscientiae alicujus ad intentionem alterius /fáydiy èst òbləgáysh(iy)ow kònshiyènsi-yiy àləkýúwjàs àd intènsi-yównəm oltəráyəs/. A trust is an obligation of conscience of one to the will of another.

Fides facta /fáydiy fàktə/. Among the Franks and Lombards undertakings were guaranteed by "making one's faith"—*fides facta*. This was symbolized by such formal acts as the giving of a rod; in suretyship giving the "*festuca*" or "*vadium*."

Fides servanda est /fáydiy sərvádə èst/. Faith must be observed. An agent must not violate the confidence reposed in him.

Fides servanda est; simplicitas juris gentium praevalent /fáydiy sərvádə èst, simplisətəs júrəs jénsh(iy)əm prəvəliyəst/. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments.

Fiducia /fəd(y)úwsh(iy)ə/. In Roman law, an early form of mortgage or pledge, in which both the title and possession of the property were passed to the creditor by a formal act of sale (properly with the solemnities of the transaction known as *mancipatio*), there being at the same time an express or implied agreement on the part of the creditor to reconvey the property by a similar act of sale provided the debt was duly paid; but on default of payment, the property became absolutely vested in the creditor without foreclosure and without any right of redemption.

Fiducial. An adjective having the same meaning as "fiduciary;" as, in the phrase "public or fiducial office."

Fiduciarius hæres /fəd(y)úwshiyériyəs híriyz/. See Fiduciary heir.

Fiduciarius tutor /fəd(y)úwshiyériyəs t(y)úwtər/. In Roman law, the elder brother of an emancipated *pupillus*, whose father had died leaving him still under fourteen years of age.

Fiduciary /fəd(y)úwsh(iy)əry/. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. As an adject-

ive it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

A term to refer to a person having duties involving good faith, trust, special confidence, and candor towards another. A fiduciary "includes such relationships as executor, administrator, trustee, and guardian." ABA Code of Judicial Conduct, Canon 3C(3)(b). A lawyer is also in a fiduciary relationship with the client.

A person or institution who manages money or property for another and who must exercise a standard of care in such management activity imposed by law or contract; e.g. executor of estate; receiver in bankruptcy; trustee. A trustee, for example, possesses a fiduciary responsibility to the beneficiaries of the trust to follow the terms of the trust and the requirements of applicable state law. A breach of fiduciary responsibility would make the trustee liable to the beneficiaries for any damage caused by such breach.

The status of being a fiduciary gives rise to certain legal incidents and obligations, including the prohibition against investing the money or property in investments which are speculative or otherwise imprudent.

Many states have adopted the Uniform Fiduciaries Act, and the Uniform Management of Institutional Funds Act.

See also Fiduciary capacity; Fiduciary or confidential relation.

Foreign fiduciary. A trustee, executor, administrator, guardian or conservator appointed by a jurisdiction other than the one in which he is acting.

Fiduciary bond. Type of surety bond required by court to be filed by trustees, administrators, executors, guardians, and conservators to insure proper performance of their duties.

Fiduciary capacity. One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity," when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer.

Fiduciary contract. An agreement by which a person delivers a thing to another on the condition that he will restore it to him.

Fiduciary debt. A debt founded on or arising from some confidence or trust as distinguished from a "debt" founded simply on contract. *Montgomery v. Phillips Petroleum Co.*, Tex.Civ.App., 49 S.W.2d 967, 973.

Fiduciary duty. A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law (e.g., trustee, guardian).

Fiduciary heir. The Roman laws called a fiduciary heir the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament.

Fiduciary or confidential relation. A very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one person trusts in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal. Heilman's Estate, Matter of, 37 Ill.App.3d 390, 345 N.E.2d 536, 540.

A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc.

See also Confidential communications.

Fiduciary shield doctrine. Equitable doctrine which holds that actions taken by individual defendants solely in their capacity as corporate officers could not provide the basis for the exercise of jurisdiction over their persons, absent circumstances making such exercise appropriate. This doctrine confers jurisdictional immunity upon corporate officials, even though their conduct be tortious as long as the actions taken were in the interests of the corporation and not purely personal and the corporation is not merely a shell for the individual and does not lack sufficient assets to respond. Totalplan Corp. of America v. Lure Camera Ltd., D.C.N.Y., 613 F.Supp. 451, 457.

Fief /fiyf/. A fee, feod, or feud.

Fief d'haubert (or **d'hauberk**) /fiyf dówbér(k)/. Fr. In Norman feudal law, a fief or fee held by the tenure of knight-service; a knight's fee. 2 Bl.Comm. 62. A fee held on the military tenure of appearing fully armed on the *ban* and *arrière-ban*.

Fief-tenant /fiyf ténánt/. In old English law, the holder of a fief or fee; a feeholder or freeholder.

Fiel /fiyéyl/. In Spanish law, a sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver.

Field. Open area of land; commonly used for cultivation or pasturage.

Fieldad /fiyeyldád/. In Spanish law, sequestration. This is allowed in six cases by the Spanish law where the title to property is in dispute.

Field-ale, or filkdale /fiyldeyl/. An ancient custom in England, by which officers of the forest and bailiffs of hundreds had the right to compel the hundred to furnish them with ale.

Field audit. *See* Audit.

Field book. A description of the courses and distances of the lines, and of the corners of the lots of the town as they were surveyed, and as they appear by number and division on the town plan.

Field Code. The original New York Code brought into being by David Dudley Field in 1848 calling for simplification of civil procedure. This Code served as the model for future state civil procedure codes and rules.

Field notes. A description of a survey.

Field office. A branch or subsidiary office of a government agency apart from the central office.

Field reeve. In old English law, an officer elected by the owners of a regulated pasture to keep in order the fences, ditches, etc., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners.

Field sobriety tests. In determining reasonable grounds for DWI arrest, many police departments use field sobriety tests in which a suspect is requested to step from his vehicle and engage in a number of physical acts which are designed to test the person's coordination for the purpose of determining intoxication. The finger-to-nose test, picking up coins, walking a line, reciting the alphabet, and other similar activities have become a fairly common part of DWI arrest procedure.

Field vision. The general vision used in catching in sight, following and locating objects;—distinguished from "binocular vision" (*q.v.*).

Field warehouse financing agreement. A loan agreement in which the inventory that is being pledged as collateral is segregated from the company's other inventories and stored on its premises under the control of a field warehouse company. *See also* Field warehousing.

Field warehouse receipt. Document issued by warehouseman evidencing receipt of goods which have been stored. Such may be used as collateral for loans. *See also* Field warehousing; Warehouse receipt.

Field warehousing. Arrangement whereby wholesaler, manufacturer, or merchant finances his business through pledge of goods remaining on his premises and it is limited type of warehousing as distinguished from public warehouse. Lawrence Warehouse Co. v. McKee, C.A.Fla., 301 F.2d 4, 6. An arrangement whereby a pledgor may have necessary access to the pledged goods, while the goods are actually in the custody and control

of a third person, acting as a warehouseman on the pledgor's premises. Field warehousing is often employed as a security device in inventory financing where the financier or secured party desires to maintain close control over the borrower's inventory and have the advantages of being a pledgee of the property. The device is employed in financing manufacturers or wholesalers in seasonal industries and is also useful where the manufactured products must be aged or cured or where they are accumulated over a period of time and then disposed of all at once.

Field work. Work in the field, specifically the task of gathering data from the field. Includes the sphere of practical operation, as of an organization or enterprise; also, the place or territory where direct contacts as with a clientele may be made, or whereby practical, first-hand knowledge may be gained. Sphere of action or place of contest, either literally or figuratively; hence, any scene of operations or opportunity for activity. State ex rel. McPherson v. Snell, 168 Or. 153, 121 P.2d 930, 937.

Fierding courts /firdiŋ kórts/. Ancient Gothic courts of an inferior jurisdiction, so called because *four* were instituted within every inferior district or hundred. 3 Bl.Comm. 34.

Fieri /fáyəray/. Lat. To be made; to be done. See *in fieri*.

Fieri facias (Fi. Fa.) /fáyəray féys(h)(i)yəs/. Lat. Means that you "cause (it) to be done." Judicial writ directing sheriff to satisfy a judgment from the debtor's property. In its original form, the writ directed the seizure and sale of goods and chattels only, but eventually was enlarged to permit levy on real property, too; largely synonymously with modern writ of execution.

Fieri facias de bonis ecclesiasticis /fáyəray féys(h)(i)yəs diy bównəs əkliyziyéstəsəs/. When a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese or to the archbishop (during the vacancy of the bishop's see), commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned.

Fieri facias de bonis testatoris /fáyəray féys(h)(i)yəs diy bównəs tɛstátóras/. The writ issued on an ordinary judgment against an executor when sued for a debt due by his testator. If the sheriff returns to this writ *nulla bona*, and a *devastavit* (*q.v.*), the plaintiff may sue out a *feri facias de bonis propriis*, under which the goods of the executor himself are seized.

Fieri feci /fáyəray fíysay/. Means I have caused to be made. The return made by a sheriff or other officer to a writ of *feri facias*, where he has collected the whole, or a part, of the sum directed to be levied. The return, as actually made, is expressed by the word "Satisfied" indorsed on the writ.

Fieri non debet (debut), sed factum valet /fáyəray nòn débat, sɛd fáktəm válat/°débyuwat°/. It ought not to be done, but [if] done, it is valid.

Fi. Fa. /fáy féy/. An abbreviation for *feri facias* (*q.v.*).

FIFO. First-in, first-out. A method of accounting for inventory which assumes that goods are sold in the order in which they are purchased, *i.e.*, the oldest items sold first. The other common inventory costing methods include LIFO (last-in, first-out), specific identification, and average cost. Contrast with Last-in, first-out (LIFO).

FIFRA. Federal Insecticide, Fungicide, and Rodenticide Act. 7 U.S.C.A. §§ 136-136y.

Fifteenth Amendment. Amendment to U.S. Constitution, ratified by the States in 1870, guaranteeing all citizens the right to vote regardless of race, color, or previous condition of servitude. Congress was given the power to enforce such rights by appropriate legislation.

Fifteenths /fiftiynθs/. In old English law, this was originally a tax or tribute, levied at intervals by act of parliament, consisting of one-fifteenth of all the movable property of the subject or personalty in every city, township, and borough. Under Edward III, the taxable property was assessed, and the value of its fifteenth part (then about £29,000) was recorded in the exchequer, whence the tax, levied on that valuation, continued to be called a "fifteenth," although as the wealth of the kingdom increased, the name ceased to be an accurate designation of the proportion of the tax to the value taxed. 1 Bl.Comm. 309.

Fifth Amendment. Amendment to U.S. Constitution providing that no person shall be required to answer for a capital or otherwise infamous offense unless on indictment or presentment of a grand jury except in military cases; that no person will suffer double jeopardy; that no person will be compelled to be a witness against himself; that no person shall be deprived of life, liberty or property without due process of law and that private property will not be taken for public use without just compensation.

Fifth degree of kinship. The degree of kinship between a deceased intestate and the children of decedent's first cousin, sometimes designated as "first cousins once removed", is in the "fifth degree". *Simonton v. Edmunds*, 202 S.C. 397, 25 S.E.2d 284, 285.

Fifty decisions. Ordinances of Justinian (529-532) upon the authority of which all moot points were settled in the preparation of the second edition of the Code.

Fight. A hostile encounter, affray, or altercation; a physical or verbal struggle for victory; pugilistic combat. *Gitlow v. Kiely*, D.C.N.Y., 44 F.2d 227, 232. See also *Affray*.

Fighting words doctrine. The First Amendment doctrine that holds that certain utterances are not constitutionally protected as free speech if they are inherently likely to provoke a violent response from the audience. *N.A.A.C.P. v. Clairborne Hardware Co.*, Miss., 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982). Words

which by their very utterance inflict injury or tend to incite an immediate breach of the peace, having direct tendency to cause acts of violence by the persons to whom, individually, remark is addressed. The test is what persons of common intelligence would understand to be words likely to cause an average addressee to fight. *City of Seattle v. Camby*, 104 Wash.2d 49, 701 P.2d 499, 500.

The "freedom of speech" protected by the Constitution is not absolute at all times and under all circumstances and there are well-defined and narrowly limited classes of speech, the prevention and punishment of which does not raise any constitutional problem, including the lewd and obscene, the profane, the libelous, and the insulting or "fighting words" which by their very utterance inflict injury or tend to incite an immediate breach of the peace. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031.

Fightwite. Sax. A mulct or fine for making a quarrel to the disturbance of the peace. A payment to a lord possessing soc over a place where a wrong was done.

Figures. Artificial representations of a form, as in sculpture, drawing, or painting, especially the human body represented by art of any kind. *People v. Eastman*, 89 Misc. 596, 152 N.Y.S. 314, 317.

Numerals; number symbols. They are either Roman, made with letters of the alphabet: e.g. "MDCCLXXVI"; or they are Arabic: e.g. "1776".

Filacer /fɪləsər/fɪləzər/. In England an officer of the superior courts at Westminster, whose duty it was to file the writs on which he made process. There were fourteen filacers, and it was their duty to make out all original process. The office was abolished in 1837.

Filare /fə'leəri/. In old English practice, to file.

Filching /fɪlʃɪŋ/fɪlʃɪŋ/. To steal money, commonly of little value, secretly or underhandedly. *Peck v. Bez*, W.Va., 40 S.E.2d 1, 10.

File, n. A record of the court. *Milton v. United States*, C.C.A.La., 105 F.2d 253, 255. A paper is said to be filed when it is delivered to the proper officer, and by him received to be kept on file as a matter of record and reference. But, in general, "file," or "the files," is used loosely to denote the official custody of the court or the place in the offices of a court where the records and papers are kept. The "file" in a case includes the original complaint and all pleadings and papers belonging thereto. *See also* Docket; Record.

File, v. To lay away and arrange in order, pleadings, motions, instruments, and other papers for preservation and reference. To deposit in the custody or among the records of a court. To deliver an instrument or other paper to the proper officer or official for the purpose of being kept on file by him as a matter of record and reference in the proper place. It carries the idea of permanent preservation as a public record. *City of Overland Park v. Nikias*, 209 Kan. 643, 498 P.2d 56, 59. *See also* Record.

Constructive filing. *See* that title.

Filing officer. The person in charge of the office responsible for receiving legal papers and documents that are required to be publicly filed (e.g., office or department of Secretary of State in which a financing statement must be filed to perfect a security interest under the Uniform Commercial Code. U.C.C. § 9-401).

Filing with court. Delivery of legal document to clerk of court or other proper officer with intent that it be filed with court. Fed.R.Civil P. 5 requires that all papers after the complaint required to be served upon a party shall be filed with the court (i.e., clerk or judge) either before service or within a reasonable time thereafter.

Filed. *See* File.

Filed rate doctrine. Doctrine which forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate federal regulatory authority. *Arkansas Louisiana Gas Co. v. Hall, La.*, 453 U.S. 571, 576, 101 S.Ct. 2925, 2930, 69 L.Ed.2d 856.

File wrapper. The written record of the preliminary negotiations between an applicant and the Patent Office for a patent monopoly contract. *Norton Co. v. Carborundum Co.*, C.A.Mass., 530 F.2d 435, 440.

File wrapper estoppel. Under the doctrine of "file wrapper estoppel," an applicant who has limited or modified a claim in order to avoid its rejection by the Patent Office may not later expand his claim by including the excluded matter, or its equivalent, or by omitting the limitations period. *Speed Shore Corp. v. Denda*, C.A.Cal., 605 F.2d 469, 472. Doctrine means that the inventor had earlier given up certain claims with respect to his patent that he is now attempting to assert through the doctrine of equivalents in order to establish a basis for his charge that the patent has been infringed. *Systematic Tool & Machine Co. v. Walter Kiddie & Co., Inc.*, D.C.Pa., 390 F.Supp. 178, 200. *See also* Prosecution history estoppel.

Filiation /fɪliə'jɔːʃən/. Judicial determination of paternity. The relation of child to father.

In the civil law, the descent of son or daughter, with regard to his or her father, mother, and their ancestors.

Filiation proceeding. A special statutory proceeding in the nature of a civil action to enforce a civil obligation or duty specifically for the purpose of establishing parentage and the putative father's duty to support his illegitimate child. *State v. Morrow*, 158 Or. 412, 75 P.2d 737, 738, 739, 744. *See also* Paternity suit or action.

Filibuster. Tactics designed to obstruct and delay legislative action by prolonged and often irrelevant speeches on the floor of the House or Senate. *See also* Cloture; a means of cutting off filibustering.

Filing. *See* Constructive filing; File.

Filing status. One of four categories used by an individual in preparing his or her income taxes. The four categories include: (1) single, (2) head of household, (3) married filing a joint return, (4) married filing separate returns. The taxpayer's filing status determines the tax rate schedule to be used in calculating the individual's

tax liability. The filing status with the most advantageous rate schedule is "married filing a joint return."

Filiolus (or **filius**) /filiyówləs/. In old records, a godson.

Filius /filiyəs/. Lat. A son; a child. As distinguished from heir, *filius* is a term of nature, *hæres* a term of law. In the civil law the term was used to denote a child generally. A distinction was sometimes made, in the civil law, between "*filiu*" and "*liberi*"; the latter word including grandchildren (*nepotes*), the former not.

Filius est nomen naturæ, sed hæres nomen juris /filiyəs èst nówmæn netyúriy sèd hiriyz nówmæn júrs/. Son is a name of nature, but heir is a name of law.

Filius familias /filiyəs fəmiliiyəs/. In the civil law, the son of a family; an unemancipated son.

Filius in utero matris est pars viscerum matris /filiyəs in yúwtərow méytrəs èst párz visərəm méytrəs/. A son in the mother's womb is part of the mother's vitals.

Filius mulieratus /filiyəs myúwl(i)yəréytəs/. In old English law, the eldest legitimate son of a woman, who previously had an illegitimate son by his father. Otherwise called "*mulier*." 2 Bl.Comm. 248.

Filius nullius /filiyəs nəláyəs/ "nəliyəs/. An illegitimate child; son of nobody.

Filius populi /filiyəs pópyəlay/. A son of the people. Natural child.

Fill. To make full; to complete; to satisfy or fulfill; to possess and perform the duties of; to occupy the whole capacity or extent of, so as to leave no space vacant. To execute customer's order to buy or sell a security or commodity.

Filthy. Dirty, vulgar, indecent, obscene, lewd, offensive to the moral sense, morally depraving, debasing. Containing or covered with filth. See *Obscene*.

Filum /fáyləm/. Lat. In old practice, a file, *i.e.*, a thread or wire on which papers were strung, that being the ancient method of filing. An imaginary thread or line passing through the middle of a stream or road, as in the titles following.

Filum aquæ /fáyləm əkwiy/. A thread of water; a line of water; the middle line of a stream of water, supposed to divide it into two equal parts, and constituting in many cases the boundary between the riparian proprietors on each side. *Medium filum* is sometimes used with no additional meaning. Cf. *Thalweg*.

Filum forestæ /fáyləm fəréstiy/. The border of the forest. 2 Bl.Comm. 419. Manw. *Purlieu*.

Filum viæ /fáyləm váiy/. The thread or middle line of a road. The boundary between the owners of the land on each side of a road.

Fin /fæn/. Fr. An end, or limit; a limitation, or period of limitation.

Final. Last; conclusive; decisive; definitive; terminated; completed. As used in reference to legal actions,

this word is generally contrasted with "interlocutory." For *res judicata* purposes, a judgment is "final" if no further judicial action by court rendering judgment is required to determine matter litigated. *Adolph Coors Co. v. Sickler*, D.C.Cal., 608 F.Supp. 1417, 1429. See also *Final decision or judgment*.

As to *final* Costs; Decree; Injunction; Judgment; Order; Process; Recovery; Sentence, and Settlement, see those titles.

Final appealable order or judgment. One that disposes of all issues and all parties in the case and leaves nothing for further determination. *Schaumburg/Glunt, Inc. v. Parmley*, Mo.App., 701 S.W.2d 201, 202. See also *Final decision or judgment*.

Final architect's certificate. One which is issued after a job is done and which finally determines the rights of the parties as to money and disputes.

Final award. One which conclusively determines the matter submitted and leaves nothing to be done except to execute and carry out terms of award. *Trollope v. Jeffries*, 55 Cal.App.3d 816, 128 Cal.Rptr. 115, 120. See *Final decision or judgment*.

Final decision or judgment. One which leaves nothing open to further dispute and which sets at rest cause of action between parties. One which settles rights of parties respecting the subject-matter of the suit and which concludes them until it is reversed or set aside. In *re Tiffany*, 252 U.S. 32, 40 S.Ct. 239, 240, 64 L.Ed. 443. Also, a decision from which no appeal or writ of error can be taken. U.S. ex rel. *Fink v. Tod*, C.C.A.N.Y., 1 F.2d 246, 251. Judgment is considered "final," and thus appealable only if it determines the rights of the parties and disposes of all of the issues involved so that no future action by the court will be necessary in order to settle and determine the entire controversy. *Howard Gault & Son, Inc. v. First Nat. Bank of Hereford, Tex.* Civ.App., 523 S.W.2d 496, 498.

"Final decision" which may be appealed (to Court of Appeals under 28 U.S.C.A. § 1291) is one that ends litigation on merits and leaves nothing for courts to do but execute judgment. U.S. v. *One Parcel of Real Property with Bldgs., Etc.*, C.A.Fla., 767 F.2d 1495, 1497. In criminal case, is imposition of sentence. *People ex rel. Grogan v. Lisinski*, 1 Dist., 113 Ill.App.3d 276, 68 Ill.Dec. 854, 446 N.E.2d 1251, 1253. See also *Final decision rule*; *Final disposition*; *Interlocutory Appeals Act*; *Judgment (Final judgment)*; *Res (Res judicata)*.

Final decision rule. Appeals to federal courts of appeals from U.S. district courts must be from "final decisions" of district courts. 28 U.S.C.A. § 1291. In other words, the courts of appeals lack jurisdiction over nonfinal judgments. The object of this restriction is to prevent piecemeal litigation which would otherwise result from the use of interlocutory appeals. See *Interlocutory Appeals Act*.

Final decree. See *Final decision or judgment*.

Final determination. See *Final decision or judgment*.

Final disposition. Such a conclusive determination of the subject-matter that after the award, judgment, or decision is made nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation can arise thereon. *Quarture v. Allegheny County*, 141 Pa.Super. 356, 14 A.2d 575, 578. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. *See* Final decision or judgment.

Final hearing. Describes that stage of proceedings relating to the determination of a subject matter upon its merits as distinguished from those of preliminary or interlocutory nature.

Finalis concordia /fənáyɫəs kəŋkórd(i)yə/. A final or conclusive agreement.

Finality rule. *See* Final decision rule.

Final judgment. *See* Final decision or judgment; Judgment.

Final judgment rule. *See* Final decision rule.

Final order. One which terminates the litigation between the parties and the merits of the case and leaves nothing to be done but to enforce by execution what has been determined. *Richerson v. Jones*, C.A.Pa., 551 F.2d 918, 921. *See also* Final decision or judgment.

Final passage. The vote on a passage of a bill or resolution in either house of the legislature after it has received the prescribed number of readings and has been subjected to such action as is required by the fundamental law governing the body or its own rule.

Final payment. The point at which monetary credit given for an item cannot be revoked under U.C.C. Article 4, which describes four means of final payment occurs. *See* U.C.C. § 4-213(1).

Final receiver's receipt. An acknowledgment by the government that it has received full payment for public land, that it holds the legal title in trust for the entryman, and will in due course issue to him a patent.

Final settlement. In probate proceeding, a direct adjudication that the estate is fully administered; that the administrator has completely executed his trust and has accounted for all moneys received as the law requires. *In re Braun's Estate*, 140 Kan. 188, 34 P.2d 94, 95.

The final determination of amount due contractor by proper governmental authority. *Consolidated Indemnity & Insurance Co. v. W. A. Smoot & Co.*, C.C.A.Va., 57 F.2d 995, 996.

With respect to final settlement in a real estate transaction, *see* Closing.

Final submission. Exists when nothing remains to be done in proceedings to render submission of case complete. Where the whole case, both requested instructions and evidence, is submitted to the court for its ruling and the court takes the case under advisement, there is a "final submission" of the entire case. *Piatt v.*

Helm & Overly Realty Co., 342 Mo. 772, 117 S.W.2d 327, 329.

Finance. As a verb, to supply with funds through the payment of cash or issuance of stocks, bonds, notes, or mortgages; to provide with capital or loan money as needed to carry on business.

Finance is concerned with the value of the assets of the business system and the acquisition and allocation of the financial resources of the system.

Finance charge. The consideration for privilege of deferring payments of purchase price. The amount however denominated or expressed which the retail buyer contracts to pay or pays for the privilege of purchasing goods or services to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charges, attorney's fees, court costs, collection expenses or official fees. All charges incident to or condition of credit. Such costs are regulated by state and federal "truth-in-lending" statutes which require full disclosure of finance charges on credit agreements, billing statements, and the like. *See* Truth-in-Lending Act.

Finance committee. A committee of the U.S. Senate with functions and powers similar to that of the Ways and Means Committee of the House. In business, an executive level committee, commonly made up of members of board of directors, responsible for major financial decisions of business.

Finance company. Non-bank company that makes loans to individuals and businesses. Its capital comes from banks and other financial institutions and money markets—rather than from deposits. The primary types of finance companies are: consumer (or small loan) finance companies; sales finance (acceptance) companies, that purchase installment financing paper from *e.g.* automobile dealers; and, commercial finance or credit companies that make loans to manufacturers and wholesalers.

Finance lease. A lease in which the lessor does not select, manufacture or supply the goods, but enters into a contract with a third party supplier to acquire goods specifically for the purpose of leasing them to the lessee. U.C.C. § 2A-103.

Financial. Fiscal. Relating to finances.

Financial Accounting Standards Board. Independent board with responsibility to establish and interpret Generally Accepted Accounting Principles.

Financial institutions. An insured bank; a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; an insured institution as defined in the National Housing Act; a thrift institution; a broker or dealer registered with the Securities and Exchange Commission; a broker or dealer in securities or commodities; an investment banker or investment company; a currency exchange; an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; an operator of a credit card system; an insurance company; a

dealer in precious metals, stones or jewels; a pawnbroker; a loan or finance company; a travel agency; a licensed sender of money; a telegraph company. 31 U.S.C.A. § 5312. See also Uniform Probate Code, § 6-101(3).

Financial interest. An interest equated with money or its equivalent.

Financially able. Solvent; credit worthy; able to pay debts and expenses as due. Means purchaser must be able to command the necessary funds to close the transaction within the required time. *Hersh v. Garau*, 218 Cal. 460, 23 P.2d 1022. A prospective purchaser is "financially able" if he or she has the capability to make downpayment and all deferred payments required under a proposed contract of sale. *Fleming Realty & Ins., Inc. v. Evans*, 199 Neb. 440, 259 N.W.2d 604, 606. See also Financial responsibility acts; Solvency.

Financial markets. Markets for the exchange of capital in the economy, including stock, bond, commodity and foreign exchanges.

Financial reports. See Annual report; Financial statement; Profit and loss statement.

Financial responsibility. Term commonly used in connection with motor vehicle insurance equivalents. See also Financial responsibility acts.

Financial responsibility acts. State statutes which require owners of motor vehicles to produce proof of financial accountability as a condition to acquiring a license and registration so that judgments rendered against them arising out of the operation of the vehicles may be satisfied.

Financial responsibility clause. Provision in automobile insurance policy stating that the insured has at least the minimum amount of coverage required by state financial responsibility laws.

Financial statement. Any report summarizing the financial condition or financial results of a person or organization on any date or for any period. Financial statements include the balance sheet and the income statement and sometimes the statement of changes in financial position. See also Annual report.

Consolidated statement. Financial statements that include the accounts of both a parent company and controlled subsidiaries. See also Consolidated financial statements.

Financial worth. The value of one's property less what he owes, or the value of his resources less his liabilities.

Financier. A person or financial institution employed in the economical management and application of money. One skilled in matters appertaining to the judicious investment, loaning, and management of money affairs. Person or institution that financially backs business ventures.

Financing agency. A bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by

arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods. U.C.C. § 2-104.

Financing statement. A document setting out a secured party's security interest in goods. A document designed to notify third parties, generally prospective buyers or lenders, that there may be an enforceable security interest in the property of the debtor. *Villa v. Alvarado State Bank*, Tex.Civ.App., 611 S.W.2d 483, 486. It is merely evidence of the creation of a security interest, and usually is not itself a security agreement. *Shelton v. Erwin*, C.A.Mo., 472 F.2d 1118, 1120.

Under the Uniform Commercial Code, a financing statement is used under Article 9 to reflect a public record that there is a security interest or claim to the goods in question to secure a debt. The financing statement is filed by the security holder with the Secretary of State, or similar public body, and as such becomes public record. When the document is filed with the appropriate government agency, all potential lenders and third parties are put on constructive notice of the security interest. See also Secured transaction; Security interest.

Find. To come upon by seeking or by effort. *Shields v. Shields*, 115 Mont. 146, 139 P.2d 528, 530. To discover; to determine; to locate; to ascertain and declare. See also Found; Locate.

To announce a conclusion upon a disputed fact or state of facts; as a jury is said to "find a will." To determine a controversy in favor of one of the parties; as a jury "finds for the plaintiff." See also Finding.

Fin de non recevoir /fán də nòn rəsèyvwár/. In French law, an exception or plea founded on law, which, without entering into the merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called "prescription," or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted.

Finder. An intermediary who contracts to find, introduce and bring together parties to a business opportunity, leaving ultimate negotiations and consummation of business transaction to the principals. *Business Development Services, Inc. v. Field Container Corp.*, 96 Ill. App.3d 834, 52 Ill.Dec. 405, 412, 422 N.E.2d 86, 93. With respect to a securities issue, refers to one who brings together an issuer and an underwriter; in connection with mergers, refers to one who brings two companies together. May also refer to one who secures mortgage financing for borrower; or one who locates a particular type of executive or professional for a corpo-

ration; or one who locates a particular type of business acquisition for a corporation.

Finder's fee. Amount charged for bringing together parties to business opportunity (e.g., lender and borrower) or bringing issuer and underwriter together, or for performing other types of services described under "finder" supra. A finder's fee for a securities issue may be stock or a combination of cash and stock.

Finder's fee contract. An arrangement by which an intermediary finds, introduces, and brings together parties to a business opportunity, leaving the ultimate negotiation and consummation of the business transaction to the principals. *Equity Benefit Life Ins. Co. v. Trent*, Okl., 566 P.2d 449, 453.

Finding. The result of the deliberations of a jury or a court. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. A recital of the facts as found. The word commonly applies to the result reached by a judge or jury. *See also* Decision; Judgment; Verdict.

Finding of fact. Determinations from the evidence of a case, either by court or an administrative agency, concerning facts averred by one party and denied by another. *Kozsdiy v. O'Fulton Bd. of Fire and Police Com'rs*, 31 Ill.App.3d 173, 334 N.E.2d 325, 329. A determination of a fact by the court, averred by one party and denied by the other, and founded on evidence in case. *C.I.T. Corp. v. Elliott*, 66 Idaho 384, 159 P.2d 891, 897. A conclusion by way of reasonable inference from the evidence. *Welfare of Carpenter*, 21 Wash.App. 814, 587 P.2d 588, 592. Also the answer of the jury to a specific interrogatory propounded to them as to the existence or non-existence of a fact in issue. Conclusion drawn by trial court from facts without exercise of legal judgment. *Compare* Conclusion of law.

Findings of fact shall not be set aside unless clearly erroneous. Fed.R. Civil P. 52(a). The court may amend, or make additional findings, on motion of a party. Fed.R. Civil P. 52(b).

A *general finding* by a court is a general statement that the facts are in favor of a party or entitle him to judgment. It is a complete determination of all matters, and is a finding of every special thing necessary to be found to sustain the general finding.

A *special finding* is a specific setting forth of the ultimate facts established by the evidence and which are determinative of the judgment which must be given. It is only a determination of the ultimate facts on which the law must be determined. A special finding may also be said to be one limited to the fact issue submitted.

Finding of law. Term applies to rulings of law made by court in connection with findings of fact; such findings or rulings of law are subject to appellate review. *See also* Conclusion of law. *Compare* Finding of fact, above.

Fine, n. A pecuniary punishment or penalty imposed by lawful tribunal upon person convicted of crime or misdemeanor. *See e.g.* 18 U.S.C.A. § 3571. It may include a

forfeiture or penalty recoverable in a civil action, and, in criminal convictions, may be in addition to imprisonment. A fine constitutes a "sentence" as defined in Rules of Criminal Procedure. *State v. Pitts*, 548 P.2d 1202, 1204, 26 Ariz.App. 390. *See also* Penalty.

Fine, v. To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money.

In imposing fines, modern statutes require the court to consider the ability of the defendant to pay, the burden such will have on dependents of the defendant, and the effect such fine will have on the ability of the defendant to make restitution to the victim. *E.g.*, Model Penal Code § 7.02(3)(b); 18 U.S.C.A. § 3571.

Conveyancing. An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. *Hitz v. Jenks*, 123 U.S. 297, 8 S.Ct. 143, 31 L.Ed. 156. Fines were abolished in England by St. 3 & 4 Wm. IV, c. 74, substituting a disentailing deed. A fine is so called because it puts an *end* not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. The party who parted with the land, by acknowledging the right of the other, was said to *levy* the fine, and was called the "cognizor" or "conusor," while the party who recovered or received the estate was termed the "cognizee" or "conusee," and the fine was said to be levied to him.

Executed fine. *See* Executed.

Tenure law. A money payment made by a feudal tenant to his lord. The most usual fine was that payable on the admittance of a new tenant, but there was also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events.

Fine and recovery act. The English statutes 3 & 4 Wm. IV, c. 74, abolishing fines and recoveries.

Fine annullando levato de tenemento quod fuit de antiquo dominico /fáyniy ænəlændow ləvéytow diy tənəméntow kwòd fyúwæt diy æntáykwow dæmín-əkow/. An abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord.

Fine capiendo pro terris /fáyniy kæpiyéndow pròw téhrəs/. An obsolete writ which lay for a person who, upon conviction by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favor of a sum of money, etc.

Fine for alienation. A fine anciently payable upon the alienation of a feudal estate and substitution of a new tenant. It was payable to the lord by all tenants holding by knight's service or tenants *in capite* by socage tenure. Abolished in England by 12 Car. II, c. 24. 2 Bl.Comm. 71, 89.

Fine-force. An absolute necessity or inevitable constraint.

Fine for endowment. A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. Abolished in England under Henry I, and by *Magna Charta*. 2 Bl. Comm. 135.

Finem facere /fáynəm fásəriy/. To make or pay a fine.

Fine non capiendo pro pulchre placitando /fáyniy nòn kápiyéndow prów pálkriy plássténdow/. An obsolete writ to inhibit officers of courts to take fines for fair pleading.

Fine print. Term or expression referring to disclaimer or avoidance type provisions in insurance policies, financing agreements, and the like, that are typeset in small type and so located in the document so as to not be readily noticed by the insured, borrower, etc. State and federal disclosure laws have greatly curtailed this practice. *Compare* Conspicuous term or clause.

Fine pro redisseisinâ capiendo /fáyniy prów rэдэsйzэнэ kápiyéndow/. An old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine.

Fine rolls. *See* Oblate Rolls.

Fines le roy /fáynz lə rói/. In old English law, the king's fines. Fines formerly payable to the king for any contempt or offense, as where one committed any trespass, or falsely denied his own deed, or did anything in contempt of law.

Fine sur cognizance de droit, cum ceo que il ad de son done /fáyn sər kəgnáyzans də dróyt, kəm siyow kwiy il əd də sòn dówn/. A fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor. By this the deforciant acknowledged in court a former feoffment or gift in possession to have been made by him to the plaintiff. 2 Bl. Comm. 352.

Fine sur cognizance de droit tantum /fáyn sər kəgnáyzans də dróyt tántəm/. A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 Bl. Comm. 353.

Fine sur concessit /fáyn sər kənsésət/. A fine upon *concessit* (he hath granted). A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 Bl. Comm. 353.

Fine sur done grant et render /fáyn sər dówn gránt èy réndər/. A double fine, comprehending the *fine sur cognizance de droit come ceo* and the *fine sur concessit*. It might be used to convey particular limitations of estates, whereas the *fine sur cognizance de droit come ceo*, etc., conveyed nothing but an absolute estate, either of inheritance, or at least freehold. In this last species of fines, the cognizee, after the right was acknowledged to be in him, granted back again or rendered to the

cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Comm. 353.

Fingerprints. The distinctive pattern of lines on human fingertips, often used as a method of identification in criminal cases. For genetic fingerprinting, *see* DNA identification.

Finire /fənáyriy/. In old English law, to fine, or pay a fine. To end or finish a matter.

Finis /fáynəs/. Lat. An end; a fine; a boundary or terminus; a limit. Also in L. Lat., a fine (*q.v.*)

Finis est amicabilem compositio et finalis concordia ex concensu et concordia domini regis vel iusticiarum /fáynəs èst əməkéybələs kəmpəzish(iy)ow èt fənéyləs kənkórdiyə èks kənsénsiyuw èt kənkórdiyə dómənay riyjəs vèl jəstishiyérəm/. A fine is an amicable settlement and decisive agreement by consent and agreement of our lord, the king, or his justices.

Finis finem litibus imponit /fáynəs fáynəm lítəbəs impównət/. A fine puts an end to litigation.

Finis rei attendendus est /fáynəs riyaw ətəndéndəs èst/. The end of a thing is to be attended to.

Finis unius diei est principium alterius /fáynəs yənáyəs dayiyaw èst prinsipiym oltóráyəs/. The end of one day is the beginning of another.

Finitio /fənish(iy)ow/. An ending; death, as the end of life.

Finium regundorum actio /fáyniyəm rəgəndórəm əksh(iy)ow/. In the civil law, action for regulating boundaries. The name of an action which lay between those who had lands bordering on each other, to settle disputed boundaries.

Finors /fáynərz/. Those that purify gold and silver, and part them by fire and water from coarser metals. In the English statute of 4 Hen. VII, c. 2, they are also called "parters."

FIO. "Free in and out". Term in a bill of lading means that the shipper supervises and pays for both loading and discharge of cargo. *Sumitomo Corp. of America v. M/V Sie Kim*, S.D.N.Y., 632 F.Supp. 824, 834.

FIOS. "Free in and out stowage". Term indicates that the vessel does not pay for the costs of loading, stowage or discharge. *Nitram, Inc. v. Cretan Life, C.A.Fla.*, 599 F.2d 1359, 1368.

Firdfare. Sax. In old English law, a summoning forth to a military expedition (*indictio ad profectorem militarem*).

Firdiringa. Sax. A preparation to go into the army.

Firdsocne. Sax. In old English law, exemption from military service.

Firdwite. In old English law, a fine for refusing military service (*mulcta detrectantis militiam*). A mulct or penalty imposed on military tenants for their default in not appearing in arms or coming to an expedition.

A fine imposed for murder committed in the army; an acquittance of such fine.

Fire. The effect of combustion. The juridical meaning of the word does not differ from the vernacular. The word "fire," as used in insurance policies, does not have the technical meaning developed from analysis of its nature, but more nearly the popular meaning, being an effect rather than an elementary principle, and is the effect of combustion, being equivalent to ignition or burning. A destructive burning.

To dismiss or discharge from a position or employment.

Firearm. An instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it. A weapon which acts by force of gunpowder. This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc. In addition, grenade shells, fuses, and powder may be considered "firearm" even though disassembled. *U. S. v. Shafer, C.A.Ill., 445 F.2d 579, 583.*

The term "firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon. 18 U.S.C.A. §§ 232(4), 921(3).

Firearms Acts. Statutes (federal and state) imposing criminal penalties for illegal possession, sale and use of firearms; e.g. possession without license; carrying concealed weapon. See 18 U.S.C.A. § 921 et seq.; Model Penal Code § 5.07.

Firebare /fáy(ə)rbèr/. A beacon or high tower by the seaside, wherein are continual lights, either to direct vessels in the night, or to give warning of the approach of an enemy.

Firebote /fáy(ə)rbòwt/. Allowance of wood or *estovers* to maintain competent firing for the tenant. A sufficient allowance of wood to burn in a house.

Firebug. A popular phrase referring to persons guilty of the crime of arson; commonly understood to mean an incendiary, pyromaniac, or arsonist. See *Arson*.

Fire district. One of the districts into which a city may be divided for the purpose of more efficient service by the fire department.

Fire insurance. See *Insurance*.

Fireman's Rule. Doctrine which holds that professionals, whose occupations by nature expose them to particular risks, may not hold another negligent for creating the situation to which they respond in their professional capacity. *Koehn v. Devereaux, Ind.App. 3 Dist., 495 N.E.2d 211, 215.*

Fire marshal or warden. Official whose duties include supervision of firefighting and fire prevention for a state, county, city or town.

Fire ordeal. See *Ordeal*.

Fire sale. Sale of merchandise at reduced prices because of damage by fire or water; commonly, any sale at reduced prices, especially one brought about by an emergency. Fire sales are often regulated by statute or

ordinance to protect the public-buyer from deceptive sales practices.

Firm. Business entity or enterprise. Unincorporated business. Partnership of two or more persons. See also *Firm name*.

Binding; fixed; final; definite.

Firma /fórmə/. In old English law, the contract of lease or letting; also the rent (or farm) reserved upon a lease of lands, which was frequently payable in provisions, but sometimes in money, in which latter case it was called "*alba firma*," white rent.

A tribute or custom paid towards entertaining the king for one night.

Firma burgi /fórmə bórjəy/. The right, in medieval days, to take the profits of a borough, paying for them a fixed sum to the crown or other lord of the borough.

Firma feodi /fórmə fyúwdəy/"fíy(ə)day/. In old English law, a farm or lease of a fee; a fee-farm.

Firman /fórmən/. A Turkish word denoting a decree or grant of privileges, or passport to a traveler. A passport granted by the Great Mogul to captains of foreign vessels to trade within the territories over which he has jurisdiction; a permit.

Firmaratio /fórməréysh(iy)ow/. The right of a tenant to his lands and tenements.

Firmarium /fórmériyəm/. In old records, a place in monasteries, and elsewhere, where the poor were received and supplied with food. Hence the word "infirmary."

Firmarius /fórmériyəs/. L. Lat. A fermor. A lessee of a term. *Firmarii* comprehend all such as hold by lease for life or lives or for year, by deed or without deed.

Firm bid. Offer which contains no conditions which may defeat acceptance and which by its terms remains open and binding until accepted or rejected.

Firme /fórm/. In old records, a farm.

Firmior et potentior est operatio legis quam dispositio hominis /fórmíyər èt pəténshíyər èst opəréysh(iy)ow líyəs kwəm dispəzish(iy)ow hómənəs/. The operation of the law is firmer and more powerful [or efficacious] than the disposition [or will] of man.

Firmitas /fórmətəs/. In old English law, an assurance of some privilege, by deed or charter.

Firmly. A statement that an affiant "firmly believes" the contents of the affidavit imports a strong or high degree of belief, and is equivalent to saying that he "verily" believes it. The operative words in a bond or recognizance, that the obligor is held and "firmly bound," are equivalent to an acknowledgment of indebtedness and promise to pay.

Firm name. The name or title under which company transacts its business.

Firm offer. As defined by U.C.C. is an offer by a merchant to buy or sell goods in a signed writing which by its terms give assurance that it will be held open. Such is not revocable for lack of consideration during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. U.C.C. § 2-205. A binding, definite offer that is irrevocable for an agreed upon time.

Firmura /fɜrmyərə/. In old English law, liberty to scour and repair a mill-dam, and carry away the soil, etc.

First. Preceding all others; foremost; used as an ordinal of one, as earliest in time or succession or foremost in position; in front of or in advance of all others. *Colgate-Palmolive-Peet Co. v. U. S., C.C.A.Del., 130 F.2d 913, 915.* Initial; senior; leading; chief; entitled to priority or preference above others.

As to *first* Cousin; Distress, and Mortgage, see those titles.

First Amendment. Amendment to U.S. Constitution guaranteeing basic freedoms of speech, religion, press, and assembly and the right to petition the government for redress of grievances. The various freedoms and rights protected by the First Amendment have been held applicable to the states through the due process clause of the Fourteenth Amendment.

First blush rule. This rule, whereby a verdict may be set aside as excessive only if it is so to such an extent as to cause the mind at first blush to conclude that it was returned under influence of passion or prejudice on part of jury, is a mechanism to assist trial court in performing its responsibility when called upon to decide whether award is so excessive as to appear to have been given under influence of passion or prejudice. *Davis v. Graviss, Ky., 672 S.W.2d 928, 932.*

First-class. Of the most superior or excellent grade or kind; belonging to the head or chief or numerically precedent of several classes into which the general subject is divided; *e.g.* first class mail, first class airline ticket.

First-class misdemeanor. Under the English prisons act (28 & 29 Vict., c. 126, § 67) prisoners in the county, city, and borough prisons convicted of misdemeanors, and not sentenced to hard labor, were divided into two classes, one of which was called the "first division;" and it was in the discretion of the court to order that such a prisoner be treated as a misdemeanor of the first division, usually called "first-class misdemeanor," and as such not to be deemed a criminal prisoner, *i.e.*, a prisoner convicted of a crime.

First-class title. A marketable title, shown by a clean record, or at least not depending on presumptions that must be overcome or facts that are uncertain. *See also* Marketable title.

First degree murder. Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or at-

tempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree. *State v. McLaughlin, 286 N.C. 597, 213 S.E.2d 238, 244.* Distinction between "first degree murder" and "second degree murder" is a presence of a specific intent to kill. *Com. v. O'Searo, 466 Pa. 224, 352 A.2d 30, 38.* *See also* Murder; Premeditation.

First devisee /fɜrst dəvəyzi/°dəvəzi/. The person to whom the estate is first given by the will; term "next devisee" referring to the person to whom the remainder is given.

First fruits. In English ecclesiastical law, the first year's whole profits of every benefice or spiritual living, anciently paid by the incumbent to the pope, but afterwards transferred to the fund called "Queen Anne's Bounty," for increasing the revenue from poor livings.

In feudal law, one year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called "*primer seisin.*" One of the incidents to the old feudal tenures. 2 Bl.Comm. 66, 67.

Firsthand knowledge. Information or knowledge gleaned directly from its source; *e.g.* eyewitness to a homicide.

A lay witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Federal Rules Evid. 602. If testimony purports to be based on observed facts but is in fact mere repetition of the statement of another, the proper objection is lack of first-hand knowledge. *Compare* Hearsay.

First heir. The person who will be first entitled to succeed to the title to an estate after the termination of a life estate or estate for years.

First impression case. First examination. First presentation of question of law to a court for examination or decision. A case is said to be "of the first impression" when it presents an entirely novel question of law for the decision of the court, and cannot be governed by any existing precedent.

First in, first out. *See* FIFO.

First lien. One which takes priority or precedence over all other charges or encumbrances upon the same piece of property, and which must be satisfied before such other charges are entitled to participate in the proceeds of its sale. *See also* First mortgage.

First meeting. As used in a statute providing that, for insulting words or conduct to reduce homicide to manslaughter, killing must occur immediately or at "first meeting" after slayer is informed thereof, quoted words mean first time parties are in proximity under such circumstances as would enable slayer to act in the premises.

First meeting of creditors. In bankruptcy, the initial meeting called by the court for the examination of the bankrupt (*i.e.* debtor). Bankruptcy Code, § 341.

First mortgage. The senior mortgage which, by reason of its position, has priority over all junior encumbrances.

The holder of the first or senior mortgage has priority right to payment on default. *See also* Mortgage.

First of exchange. Where a set of bills of exchange is drawn in duplicate or triplicate, for greater safety in their transmission, all being of the same tenor, and the intention being that the acceptance and payment of any one of them (the first to arrive safely) shall cancel the others of the set, they are called individually the "first of exchange," "second of exchange," etc.

First offender. One who has never before been convicted of a crime and, hence, one generally given special consideration in the disposition of his case. For example, first offenders of less serious crimes often receive suspended sentences or are placed on probation.

First policy year. In insurance, the year beginning with the first issuance of the insurance policy. This phrase in a statute eliminating suicide of insured after such year as defense, means year for which policy, annually renewed, was first issued.

First purchaser. In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants.

First refusal. A right to elect to take specified property at the same price and on the same terms and conditions as those contained in a good faith offer by a third person if the owner manifests a willingness to accept the offer. *Coastal Bay Golf Club, Inc. v. Holbein, Fla.App., 231 So.2d 854, 857.*

First sale rule. Under this doctrine, a copyright holder who conveys title to a particular copy of a copyrighted work relinquishes exclusive right to vend that particular copy; although holder's other rights remain intact, vendee holds right to distribute the transferred copy in whatever manner vendee chooses. *U.S. v. Powell, C.A. Minn., 701 F.2d 70, 72.*

First vested estate. Refers to first estate to vest in heirs after death of ancestor.

Fisc /fisk/. A treasury of a kingdom, nation, state, or other governmental body. An Anglicized form of the Latin "*fiscus*" (which see).

Fiscal. In general, having to do with financial matters; *i.e.* money, taxes, public or private revenues, etc. Belonging to the fisc, or public treasury. Relating to accounts or the management of revenue. Of or pertaining to the public finances of a government or private finances of business.

Fiscal agent. Generally, a bank which collects and disburses money and serves as a depository of private and public funds in behalf of another.

Fiscal court. Formerly, a ministerial and executive body in some states.

Fiscal judge. A public officer named in the laws of the Ripuarians and some other Germanic peoples, apparently the same as the "*Graf*," "*reeve*," "*comes*," or "*count*," and so called because charged with the collection of

public revenues, either directly or by the imposition of fines.

Fiscal officers. Those charged with the collection and distribution of public money, as, the revenues of a state (State Treasurer), county, or municipal corporation. In private corporation, officers directly charged with duty to oversee financial transactions such as treasurer and comptroller.

Fiscal period. In accounting, a period of time for which financial statements are prepared such as a year, a month or a quarter. *See also* Accounting period; Fiscal year.

Fiscal year. A period of twelve consecutive months chosen by a business as the accounting period for annual reports. A corporation's accounting year. Due to the nature of a particular business, some companies do not use the calendar year for their bookkeeping. A typical example is the department store which finds December 31 too early a date to close its books after Christmas sales. For that reason many stores close their accounting year January 31. Their fiscal year, therefore, runs from February 1 of one year through January 31 of the next. The fiscal year of other companies may run from July 1 through the following June 30. Most companies, though, operate on a calendar year basis. *See also* Accounting period.

Fiscus /fiskəs/. *Roman law.* The treasury of the prince or emperor, as distinguished from "*ærarium*," which was the treasury of the state. This distinction was not observed in France. In course of time the *fiscus* absorbed the *ærarium* and became the treasury of the state. The treasury or property of the state, as distinguished from the private property of the sovereign.

English law. The king's treasury, as the repository of forfeited property. The treasury of a noble, or of any private person.

Fish Commissioner. A public officer of the United States, created by act of congress of February 9, 1871, R.S. § 4395, whose duties principally concerned the preservation and increase throughout the country of fish suitable for food. Office of Commissioner of Fisheries has been abolished with functions transferred to the U.S. Fish and Wildlife Service.

Fishery. Business or process of catching, processing, or selling fish. A hatchery or place for catching fish.

A right or liberty of taking fish at a particular place or waters. A species of incorporeal hereditament, anciently termed "*piscary*," of which there are several kinds:

Common fishery. A fishing ground where all persons have a right to take fish. Not to be confounded with "common of fishery," as to which *see* Common, *n.*

Free fishery. A franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil.

Right of fishery. The general and common right of the citizens to take fish from public waters, such as the sea, great lakes, etc. *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331. Such rights are restricted however by federal and state laws that establish fishing seasons, licensing requirements, catch limits, etc.

Several fishery. A fishery of which the owner is also the owner of the soil, or derives his right from the owner of the soil. 2 Bl.Comm. 39, 40. One by which the party claiming it has the right of fishing, independently of all other, so that no person can have a coextensive right with him in the object claimed; but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner.

Fishgarth. A dam or weir in a river for taking fish.

Fishing trip or expedition. Using the courts to find out information beyond the fair scope of the lawsuit. The loose, vague, unfocused questioning of a witness or the overly broad use of the discovery process. Discovery sought on general, loose, and vague allegations, or on suspicion, surmise, or vague guesses. The scope of discovery may be restricted by protective orders as provided for by Fed.Rule Civil P. 26(c).

Fish royal. These were the whale and the sturgeon, which, when thrown ashore or caught near the coast of England, became the property of the king by virtue of his prerogative and in recompense for his protecting the shore from pirates and robbers. Some authorities include the porpoise.

Fistuca or festuca /fæstyúwkə/. In old English law, the rod or wand, by the delivery of which the property in land was formerly transferred in making a feoffment. Called, also, "*baculum*," "*virga*," and "*fustis*." See *Festuca*.

Fit. Suitable or appropriate. Conformable to a duty. Adapted to, designed, prepared. Words "fit" and "proper" on issue of custody in divorce cases are usually interpreted as meaning moral fitness. *Farwell v. Farwell*, 33 Wis.2d 324, 147 N.W.2d 289, 292.

Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. U.C.C. § 2-315. See also *Warranty*.

Fitz. A Norman word, meaning "son." It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

Five-Mile Act. An English act of parliament, passed in 1665, against non-conformists, whereby ministers of that body who refused to take the oath of non-resistance were prohibited from coming within five miles of any corporate town, or place where they had preached or lectured since the passing of the act of oblivion in 1660, nullified by act of 1689.

Fix. Adjust or regulate; determine; settle; make permanent. Term imports finality; stability; certainty; definiteness. See also *Firm*.

To liquidate or render certain. To fasten a liability upon one. To transform a possible or contingent liability into a present and definite liability.

The illegal injection of a narcotic. *People v. Kimbley*, 189 C.A.2d 300, 11 Cal.Rptr. 519, 521.

Fixed. Prices are "fixed" when they are mutually agreed upon. *United States v. Masonite Corporation*, 316 U.S. 265, 62 S.Ct. 1070, 1076, 86 L.Ed. 1461. See *Fixed prices*; *Price-fixing*.

In copyright law, a work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission. Copyright Act, 17 U.S.C.A. § 101.

Fixed assets. Tangible property used in operating a business which will not be consumed or converted into cash or its equivalent during the current accounting period; e.g. plant, machinery, land, buildings, fixtures. Contrasted with liquid assets; e.g. cash, securities.

Fixed bail. Setting the amount and terms of bail.

Fixed capital. The amount of money which is permanently invested in the business. May also refer to capital invested in fixed assets (land, buildings, machinery, etc.). Cost of total plant and general equipment. *Lindheimer v. Illinois Bell Telephone Co., Ill.*, 292 U.S. 151, 54 S.Ct. 658, 78 L.Ed. 1182.

Fixed charges. Costs that do not vary with changes in output and would continue even if firm produced no output at all, such as most management expenses, interests on bonded debt, depreciation, property taxes, and other irreducible overhead. *Seattle Rendering Works, Inc. v. Darling-Delaware Co., Inc.*, 104 Wash.2d 15, 701 P.2d 502, 506.

Fixed costs. See *Fixed charges*.

Fixed debt. A more or less permanent form of debt commonly evidenced by bonds or debenture. See also *Fixed indebtedness*; *Fixed liabilities*.

Fixed expenses. See *Fixed charges*.

Fixed fee. Term commonly used in construction contracts which provide for payment of costs plus a predetermined amount as a fee.

Fixed income. That species of income which does not fluctuate over a period of time such as interest on bonds and debentures or dividends from preferred stock as contrasted with dividend income from common stock. May also refer to income received by retiree from pension, annuity, or other form of fixed retirement benefit or income.

Fixed indebtedness. An established or settled indebtedness; not contingent. State ex rel. Hawkins v. State Board of Examiners, 97 Mont. 441, 35 P.2d 116, 120. See Fixed debt; Fixed liabilities.

Fixed liabilities. Those certain and definite as to both obligation and amount; e.g. interest on bonds or mortgage. Long term liabilities. See also Fixed debt.

Fixed opinion. A conviction, bias, or prejudice as to guilt or liability disqualifying juror to impartially consider whole evidence and apply free from bias law as given in charge by court.

Fixed price contract. Type of contract in which buyer agrees to pay seller a definite, predetermined price, regardless of costs.

Fixed prices. Prices established (i.e. mutually agreed upon) between wholesalers or retailers for sale or resale of materials, goods, or products. Agreements to fix prices are generally prohibited by state and federal statutes. See Price-fixing.

Fixed rate loan. Loan in which interest rate does not change depending on market conditions.

Fixed salary. One which is definitely ascertained and prescribed as to amount and time of payment, and does not depend upon the receipt of fees or other contingent emoluments; though not necessarily a salary which cannot be changed by competent authority. Established or settled, to remain for a time.

Fixture. An article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the real property. Leewood Nat. Bank of Kansas City v. City Nat. Bank & Trust Co. of Kansas City, Mo.App., 474 S.W.2d 641, 644. That which is fixed or attached to something permanently as an appendage, and not removable.

A thing is deemed to be affixed to real property when it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law; e.g., a furnace affixed to a house or other building; counters permanently affixed to the floor of a store; a sprinkler system installed in a building. U.C.C. § 9-313(1)(a).

Agricultural fixtures. Those annexed for the purpose of farming. In re Shelar, D.C.Pa., 21 F.2d 136, 138.

Trade fixtures. Articles placed in or attached to leased property by the tenant, to facilitate the trade or business for which he occupies the premises, or to be used in connection with such business, or promote convenience and efficiency in conducting it. Such personal property as merchants usually possess and annex to the premises occupied by them to enable them to store, handle, and display their goods, which are generally removable without material injury to the premises. Unlike regular

fixtures, *trade fixtures* are not considered part of the realty. U.S. v. Lambert, D.C.Neb., 362 F.Supp. 609, 612.

FKA. Formerly known as.

Flaco. A place covered with standing water.

Flag. A national standard on which are certain emblems; an ensign; a banner. It is carried by soldiers, ships, etc., and commonly displayed at forts, businesses and many other suitable places.

In common parlance, the word "flag," when used as denoting a signal, does not necessarily mean the actual use of a flag, but by figure of speech the word is used in the secondary sense and signifies a signal given as with a flag, that is to say, as by a waving of the hand for the purpose of communicating information.

Flag desecration. Flagrant misuse of flag by such acts as mutilation, defacement, or burning. Statutes making such acts criminal offenses (e.g. 18 U.S.C.A. § 700 (1989)) have been held to be unconstitutional as violating the freedom of expression protection of the First Amendment. See United States v. Eichman, 110 S.Ct. 2404 (1990). See also Desecrate.

Flag, duty of the. This was an ancient ceremony in acknowledgment of British sovereignty over the British seas, by which a foreign vessel struck her flag and lowered her top-sail on meeting the British flag.

Flag, law of. In maritime law, the law of that nation or country whose flag is flown by a particular vessel. A shipowner who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the master that he intends the law of that flag to regulate such contracts, and that they must either submit to its operation or not contract with him.

Flag of convenience. Practice of registering a merchant vessel with a country that has favorable (i.e. less restrictive) safety requirements, registration fees, etc.

Flag of the United States. By the act entitled "An act to establish the flag of the United States," (Rev.St. §§ 1791, 1792), it was provided that, "from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission." See 4 U.S.C.A. §§ 1, 2.

Flag of truce. A white flag displayed by one of two belligerent parties to notify the other party that communication and a cessation of hostilities are desired.

Flagrans /fléygränz/. Lat. Burning; raging; in actual perpetration.

Flagrans bellum /fléygränz béləm/. A war actually going on.

Flagrans crimen /fléygränz kráymən/. In Roman law, a fresh or recent crime. This term designated a crime

in the very act of its commission, or while it was of recent occurrence.

Flagrant delit /flagrón deylí/. In French law, a crime which is in actual process of perpetration or which has just been committed.

Flagrante bello /flagrántiy bélow/. During an actual state of war.

Flagrante delicto /flagrántiy dæliktow/. In the very act of committing the crime. 4 Bl.Comm. 307.

Flagrantly against evidence /fléygrántliy ægént évædæns/. Without any substantial support in evidence. *Williams v. Commonwealth*, 276 Ky. 754, 125 S.W.2d 221, 223. So much against weight of evidence as to shock conscience and clearly indicate passion and prejudice of jury.

Flagrant necessity /fléygránt næsésatíy/. A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

Flash check. A check drawn upon a banker by a person who has no funds at the banker's and knows that such is the case. Such act is a crime. Also called check kiting.

Flat. A place covered with water too shallow for navigation with vessels ordinarily used for commercial purposes. The space between high and low water mark along the edge of an arm of the sea, bay, tidal river, etc.

A floor or separate division of a floor, fitted for house-keeping and designed to be occupied by a single family. An apartment on one floor. A floor or story in a building. A building, the various floors of which are fitted up as flats, either residential or business.

In insurance, a policy without coinsurance provision; a provision for termination of renewal policy within short period after anniversary date without charge to insured.

In finance, stock is sold flat when no provision is made for adjusting accrued dividends.

Flat bond. Bond which includes accrued interest in the price.

Flat money. Paper money which is not backed by gold or silver but issued by order of the government. Also called "fiat" money. See Federal reserve notes.

Flat rate. Fixed amount paid each period without regard to actual amount of electricity, gas, etc. used in that particular period.

Flat tax. In its pure form, a flat tax would eliminate all exclusions, deductions, and credits and impose a one-rate tax on gross income. See also Tax.

Flattery. False or excessive praise; insincere complimentary language or conduct.

Fledwite /flédwæt/. In old English law, a discharge or freedom from amerements where one, having been an outlawed fugitive, came to the place of our lord of his own accord.

The liberty to hold court and take up the amerements for beating and striking.

The fine set on a fugitive as the price of obtaining the king's freedom.

Flee from justice. Removing one's self from or secreting one's self within jurisdiction wherein offense was committed to avoid arrest; or leaving one's home, residence, or known place of abode, or concealing one's self therein, with intent, in either case, to avoid arrest, detention, or punishment for some criminal offense. *Streep v. U.S.*, 160 U.S. 128, 16 S.Ct. 244, 40 L.Ed. 365. See also Extradition; Flight from prosecution; Fugitive.

Fleet. A place where the tide flows; a creek, or inlet of water. A company of ships or navy. A prison in London (so called from a river or ditch formerly in its vicinity), abolished by 5 & 6 Vict., c. 22. See Fleta.

Flee to the wall. A metaphorical expression, used in connection with homicide done in self-defense, signifying the exhaustion of every possible means of escape, or of averting the assault, before killing the assailant.

Fleet policy. In insurance, a blanket policy which covers a number of vehicles owned by the same insured.

Flem. In Saxon and old English law, a fugitive bondman or villein.

The privilege of having the goods and fines of fugitives.

Flemene frit, flemenes frinthe, or flymena frynthe /fliymæn frít, fliymænz frinθ, fláymænə frinθ/. A corrupt pseudo-archaic form is *flemens-firth*, representing the old law Latin form, *flemenafeth*, of the Anglo-Saxon *flyman fyrmth* or *flymena fyrmth*. The reception or relief of a fugitive or outlaw.

Flemeswite /fliymzwæt/. The possession of the goods of fugitives.

Flet. In Saxon law, land; a house; home.

Fleta /fliytə/. The name given to an ancient treatise on the laws of England, founded mainly upon the writings of Bracton and Glanville, and supposed to have been written in the time of Edw. I. The author is unknown, but it is surmised that he was a judge or learned lawyer who was at that time confined in the Fleet prison, whence the name of the book.

Flexible participation bank night. A scheme whereby some method is employed by means of which some persons obtain chances to win without purchasing theater tickets. *Commonwealth v. Lund*, 142 Pa.Super. 208, 15 A.2d 839, 842.

Flexible participation scheme. A scheme whereby sum of money is given to member of audience holding registered number drawn from a hopper at theater. The scheme is one form of a lottery. *Commonwealth v. Lund*, 142 Pa.Super. 208, 15 A.2d 839, 846.

Flichwite /flichwæt/. In Saxon law, a fine on account of brawls and quarrels.

Flight from prosecution. The evading of the course of justice by voluntarily withdrawing one's self in order to avoid arrest or detention, or the institution or continuance of criminal proceedings, regardless of whether one

leaves jurisdiction. Also comprehends continued concealment. Such is considered to exist when an accused departs from the vicinity of the crime under circumstances such as to indicate a sense of fear, or of guilt or to avoid arrest, even before the defendant has been suspected of the crime. *Williams v. State*, Fla.App., 268 So.2d 566. See *e.g.* 18 U.S.C.A. §§ 1073, 1074. See also *Escape*; *Flee from justice*; *Fugitive*.

Flim-flam. A form of bunco or confidence game. *Commonwealth v. Townsend*, 149 Pa.Super. 337, 27 A.2d 462, 463. Procedure variously known as "flim-flam", "faith and trust" or "confidence game" essentially is performed by two operators, ostensibly strangers to each other, by persuading victim to turn over to one of operators a sum of money to demonstrate his trustworthiness as prerequisite to obtaining some easy money and, after victim has turned over his money, operators disappear and victim receives nothing. *Few v. U. S.*, D.C.App., 248 A.2d 125.

Flipping. Colloquial term for refinancing of consumer loans.

Float. The delay in processing transactions by banks and others which may permit the interest-free use of funds for brief periods. Checks that have been credited to the depositor's bank account, but not yet debited to the drawer's bank account. The time between when a check is written and when such check is actually deducted from bank account. In banking practice, checks and other items in the process of collection. "Float" in a checking account occurs when someone writes a check without sufficient funds, then covers the check before it returns to the bank for payment. In *re Clemente*, Bkrcty. Ohio, 15 B.R. 937, 941. See also *Kiting*.

In manufacturing, the amount of goods in the process of production, usually measured in terms of the number of units in process divided by the number of finished units produced per average day and expressed as, for example, "six days float." In finance, the unsold part of a security issue or the number of shares actively traded.

To let a given currency "float" is to allow it to freely establish its own value as against other currencies (*i.e.* exchange rate) by the law of supply and demand.

In land law, especially in the western states, a certificate authorizing the entry, by the holder, of a certain quantity of land not yet specifically selected or located. *Wisconsin Cent. R. Co. v. Price County*, 133 U.S. 496, 10 S.Ct. 341, 33 L.Ed. 687.

Floatage. See *Flotsam*.

Floater policy. In insurance, policy which is issued to cover items which have no fixed location such as jewelry or other items of personal property worn or carried about by the insured. See also *Floating policy*.

Floating charge. A continuing charge on the assets of the company creating it, but permitting the company to deal freely with the property in the usual course of business until the security holder shall intervene to enforce his claim. *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. United Railways of*

Havana & Regla Warehouses, D.C.Me., 26 F.Supp. 379, 387, 388. See also *Floating lien*.

Floating debt. Liabilities (exclusive of bonds) payable on demand or at an early date; *e.g.* accounts payable; bank loans.

Floating easement. Easement for right-of-way which, when created, is not limited to any specific area on servient tenement. *City of Los Angeles v. Howard*, 53 Cal.Rptr. 274, 276, 244 C.A.2d 538.

Floating interest rate. Rate of interest that is not fixed but which varies depending upon the existing rate in the money market.

Floating lien. A security interest retained in collateral even when the collateral changes in character, classification, or location. An inventory loan in which the lender receives a security interest or general claim on all of a company's inventory. Security interest under which borrower pledges security for present and future advances. *John Miller Supply, Inc. v. Western State Bank*, 55 Wis.2d 385, 199 N.W.2d 161, 163. Such security is not only in inventory or accounts of the debtor in existence at the time of the original loan, but also in his after-acquired inventory or accounts. U.C.C. § 9-204(4).

Floating or circulating capital. Capital retained for the purpose of meeting current expenditures. The capital which is consumed at each operation of production and reappears transformed into new products. Capital in the form of current, as opposed to fixed, assets.

Floating policy. Insurance policy intended to supplement specific insurance on property and attaches only when the latter ceases to cover the risk, and the purpose of such policy is to provide indemnity for property which cannot, because of its frequent change in location and quantity, be covered by specific insurance. *Davis Yarn Co. v. Brooklyn Yarn Dye Co.*, 293 N.Y. 236, 56 N.E.2d 564, 570. See also *Floater policy*.

Floating stock. The act or process by which stock is issued and sold. See also *Issue*.

Floating zone. A concept in zoning whereby land use is predetermined by reserving specified portions of an entire area for particular uses while not immediately assigning particular parcels to a certain use. Such a zone has no defined boundaries. It is conceived as floating over the entire area where it may eventually be established. *Nick v. Planning & Zoning Com'n of Town of East Hampton*, 6 Conn.App. 110, 503 A.2d 620, 622. See also *Zoning*.

Flode-mark. Flood-mark, high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore.

Flogging. Thrashing or beating with a whip or lash.

Flood. An inundation of water over land not usually covered by it. Water which inundates area of surface of earth where it ordinarily would not be expected to be. *Stover v. U. S.*, D.C.Cal., 204 F.Supp. 477, 485. See also *Act of God*; *Flood water*.

Ordinary and extraordinary floods. Extraordinary or unprecedented floods are floods which are of such unusual occurrence that they could not have been foreseen by men of ordinary experience and prudence. Ordinary floods are those, the occurrence of which may be reasonably anticipated from the general experience of men residing in the region where such floods happen.

Flood insurance. See Insurance.

Floodplain. Land adjacent to rivers, which, because of its level topography, floods when river overflows.

Flood water. Waters which escape from stream or other body of water and overflow adjacent territory, under conditions which do not usually occur. *Everett v. Davis*, 18 Cal.2d 289, 115 P.2d 821, 823, 824. Flood water is the extraordinary overflow of rivers and streams. *Keys v. Romley*, 64 Cal.2d 396, 50 Cal.Rptr. 273, 275, 412 P.2d 529. Waters which escape from a watercourse in great volume and flow over adjoining lands in no regular channel. *Kennecott Copper Corp. v. McDowell*, 100 Ariz. 276, 413 P.2d 749, 752.

Floor. A term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session. A member who has been recognized by the chairman, and who is in order, is said to "have the floor", until his remarks are concluded. Similarly, the "floor of the house" means the main part of the hall where the members sit, as distinguished from the galleries, or from the corridors or lobbies.

Trading area where stocks and commodities are bought and sold on exchanges.

The lower limit; e.g. minimum wages; lowest price stock will be permitted to fall before selling.

In England, the floor of a court is that part between the judge's bench, and the front row of counsel. Litigants appearing in person, in the high court or court of appeal, are supposed to address the court from the floor.

Floor broker. Member of stock or commodity exchange who is employee of member firm and executes trades for clients.

Floored. An automobile is "floored" when it is financed under a trust receipt, floor plan financing agreement, or similar title retention document, whereby retail dealer obtains possession of automobile from distributor for exhibition and sale through payment to distributor by finance company. *Commercial Credit Co. v. Barney Motor Co.*, 10 Cal.2d 718, 76 P.2d 1181, 1183. See Floor plan financing.

Floor plan financing. Arrangement for the lending of money to an automobile dealer, or other supplier of goods, so that he may purchase cars, or other articles, to include in his inventory; the loan being secured by the automobiles or other goods while in the dealer's possession, and is gradually reduced as the cars or other merchandise are sold. *Harlan v. U. S.*, 160 Ct.Cl. 209, 312 F.2d 402, 406.

Floor plan rule. Rule by which an owner who has placed an automobile on the floor of a retail dealer's

showroom for sale is estopped to deny the title of an innocent purchaser from such dealer in the ordinary retail dealing, without knowledge of any conflicting claim. *Mutual Finance Co. v. Municipal Emp. Union Local No. 1099*, 110 Ohio App. 341, 165 N.E.2d 435.

Floor trader. Member of stock or commodity exchange who trades on floor for his own account.

Florin /flóhrən/. A coin originally made at Florence with the value of about two English shillings.

Flotage /flówtájəz/. See Flotsam.

Floterial district /flówtíriyəl dístrəkt/. Term used to refer to a legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned. *Davis v. Mann, Va.*, 377 U.S. 678, 84 S.Ct. 1441, 1446, 12 L.Ed.2d 609.

Flotsam, flotsan /flótsəm/. A name for the goods which float upon the sea when cast overboard for the safety of the ship, or when a ship is sunk. Distinguished from "jetsam" (goods deliberately thrown over to lighten ship) and "ligan".

Floud-marke. In old English law, high-water mark; flood-mark.

Flowage. The natural flow or movement of water from an upper estate to a lower one is a servitude which the owner of the latter must bear, though the flowage be not in a natural water course with well defined banks.

Flowage easement. See Easement.

Flower bond. Type of U.S. Savings Bond which may be cashed in at par to pay Federal estate taxes.

Flowing lands. Term imports raising and setting back water on another's land, by a dam placed across a stream or water course which is the natural drain and outlet for surplus water on such land.

Flow tide. High tide. See Tide.

FLSA. See Fair Labor Standards Act.

Fluctuating clause. Type of escalator provision which is inserted in some long term contracts to allow for increase in costs during the contract period. See also Escalator clause.

Fluctus /flóktəs/. Flood; flood-tide.

Flume. Primarily a stream or river, but usually used to designate an artificial channel applied to some definite use, and may mean either an open or a covered aqueduct.

Flumen /fl(y)úwmen/. In Roman law, a servitude which consists in the right to conduct the rain-water, collected from the roof and carried off by the gutters, onto the house or ground of one's neighbor. Also a river or stream. In old English law, flood; flood-tide.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est /fl(y)úwmənə èt pòrtəs pábłəkə sànt, idiyówkwiý jəs pískándaý ómnəbəs kəmyúwniy èst/. Rivers and ports are public; therefore the right of fishing there is common to all.

Fluminæ volucres /fl(y)úwməniý vəl(y)úwkriyz/. Wild fowl; waterfowl.

Fluvius /fl(y)úwviyas/. Lat. A river; a public river; flood; flood-tide.

Fluxus /fláksəs/. In old English law, flow. *Per fluxum et refluxum maris*, by the flow and reflow of the sea.

Fly for it. Anciently, it was the custom in a criminal trial to inquire after a verdict, "Did he fly for it?" After the verdict, even if not guilty, forfeiture of goods followed conviction upon such inquiry. Abolished by 7 & 8 Geo. IV, c. 28.

Flyma /fláymə(n)/. In old English law, a runaway; fugitive; one escaped from justice, or who has no "hla-ford."

Flyman-frymth /fláymən frimθ/. See Flemen frit.

Fly-power. A written assignment in blank, whereby, on being attached to a stock certificate, the stock may be transferred.

FMC. Federal Maritime Commission.

FMCS. Federal Mediation and Conciliation Service.

FMW. Fair market value.

FNMA. Federal National Mortgage Association.

FOB. Free on board some location (for example, FOB shipping point; FOB destination). A delivery term which requires a seller to ship goods and bear the expense and risk of loss to the F.O.B. point designated. The invoice price includes delivery at seller's expense to that location. Title to goods usually passes from seller to buyer at the FOB location. U.C.C. § 2-319(1).

Focage /fówkəj/. House-bote; fire-bote.

Focale /fówkəl/. In old English law, firewood. The right of taking wood for the fire. Fire-bote.

Fodder /fódər/. Food for horses or cattle. In feudal law, the term also denoted a prerogative of the prince to be provided with corn, etc., for his horses by his subjects in his wars.

Fodertorium /fódərtóriyam/. Provisions to be paid by custom to the royal purveyors.

Foderum /fódərəm/. See Fodder.

Fodina. A mine.

Fœdus /fiyðəs/. In international law, a treaty; a league; a compact.

Fœminæ ab omnibus officiis civilibus vel publicis remotæ sunt /féməniý əb ómnəbəs əfis(h)iyəs sòvləbəs vəl pábłəsəs rəmówtiy sànt/. Women are excluded from all civil and public charges or offices.

Fœminæ non sunt capaces de publicis officiis /féməniý nón sànt kəpéysiyz diy pábłəsəs əfis(h)iyəs/. Women are not admissible to public offices.

Fœmina viro co-operta /fémənə váyro kòw(ow)pártə/. A married woman; a *feme covert*.

Fœneration /fiynərəyshən/. Lending money at interest; the act of putting out money to usury.

Fœnus /fiynəs/. Lat. In the civil law, interest on money; the lending of money on interest.

Fœnus nauticum /fiynəs nótəkəm/. Nautical or maritime interest.

Fœnus unciarum /fiynəs ənsiyériyəm/. Interest of one-twelfth, that is, interest amounting annually to one-twelfth of the principal, hence at the rate of eight and one-third per cent. per annum. This was the highest legal rate of interest in the early times of the Roman republic. An extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; sometimes called "*usura maritima*." 2 Bl.Comm. 458. The extraordinary rate of interest, proportioned to the risk, demanded by a person, lending money on a ship, or on "bottomry," as it is termed. The agreement for such a rate of interest is also called "*fœnus nauticum*."

Fœticide /fiytəsàyd/. See Feticide.

Fœtura /fətyúra/. In the civil law, the produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property by virtue of his right.

Fœtus /fiytəs/. An unborn child. An infant *in ventre sa mère*.

Fog. In maritime law, any atmospheric condition (including not only fog properly so called, but also mist or falling snow) which thickens the air, obstructs the view, and so increases the perils of navigation.

Fogagium /fəgéyjijəm/. In old English law, foggage or fog; a kind of rank grass of late growth, and not eaten in summer.

Foi /fóy/f(w)éy/fwá/. In French feudal law, faith; fealty.

FOIA. Freedom of Information Act.

Foiterers /fóytərərz/féy/. Vagabonds.

Folc-gemote /fówkgəməwt/. (Spelled, also, *folkmote*, *folcmote*, *folkgemote*; from *folc*, people, and *gemote*, an assembly.) In Saxon law, a general assembly of the people in a town or shire. It appears to have had judicial functions of a limited nature, and also to have discharged political offices, such as deliberating upon the affairs of the commonwealth or complaining of misgovernment, and probably possessed considerable powers of local self-government. The name was also given to any sort of a popular assembly.

Folc-land /fówklænd/. In Saxon law, land of the folk or people. Land belonging to the people or the public. Folc-land was the property of the community. In might be occupied in common, or possessed in severalty; and,

in the latter case, it was probably parceled out to individuals in the folc-gemote or court of the district, and the grant sanctioned by the freemen who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. It was subject to many burdens and exactions from which boc-land was exempt.

Folc-mote /fówkmòwt/. A general assembly of the people, under the Saxons. *See* Folc-gemote.

Folc-right /fówkràyt/. The common right of all the people. 1 Bl.Comm. 65, 67.

The *jus commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees.

Foldage. In old English law, a privilege possessed in some places by the lord of a manor, which consisted in the right of having his tenant's sheep to feed on his fields, so as to manure the land. The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty.

Fold-course. In English law, land to which the sole right of folding the cattle of others is appurtenant. Sometimes it means merely such right of folding. The right of folding on another's land, which is called "common foldage."

Fold-soke. A feudal service which consisted in the obligation of the tenant not to have a fold of his own but to have his sheep lie in the lord's fold.

Folgarii /fəlgérijay/. Menial servants; followers.

Folgere /fówljər/. In old English law, a freeman, who had no house or dwelling of his own, but was the follower or retainer of another (*heorthfæst*), for whom he performed certain predial services.

Folgers /fówljərz/. Menial servants or followers.

Folgoth. Official dignity.

Folie brillante /foliy bràytíyk/. *See* Insanity.

Folie circulaire /foliy sirkjuwlr/. *See* Insanity.

Folio. A leaf of a book or manuscript. A page number. In the ancient lawbooks it was the custom to number the leaves, instead of the pages; hence a folio would include both sides of the leaf, or two pages. The references to these books are made by the number of the folio, the letters "a" and "b" being added to show which of the two pages is intended.

A large size of book, the page being obtained by folding the sheet of paper once only in the binding. Many of the ancient lawbooks are folios.

When used in connection with legal documents, it formerly meant a certain number of words varying from 72 to 100, but generally in the United States it consisted of 100. Such was used as a unit for measuring the text length of the legal instrument.

Placing a serial number on each leaf or page of printed matter.

Folk-land; folk-mote /fówklænd/fówkmòwt/. *See* Folc-land; Folc-gemote.

Follow. To conform to, comply with, or be fixed or determined by; as in the expressions "costs follow the event of the suit," "the *situs* of personal property follows that of the owner," "the offspring follows the mother" (*partus sequitur ventrem*). To go, proceed, or come after. To seek to obtain; to accept as authority.

Fonds de commerce. Fr. Goods of commerce, and trade.

Fonds et biens. Fr. In French law, goods and effects; including realty.

Fonds perdus. In French law, a capital is said to be invested *à fonds perdus* when it is stipulated that in consideration of the payment of an amount as interest, higher than the normal rate, the lender shall be repaid his capital in this manner. The borrower, after paying the interest during the period determined, is free as regards the capital itself.

Fonsadera /fònsaðérə/. In Spanish law, any tribute or loan granted to the king for the purpose of enabling him to defray the expenses of a war.

Fontana /fontænə/. A fountain or spring.

Food and Drug Administration. An agency within the Department of Health and Human Services established to set safety and quality standards for foods, drugs, cosmetics, and other household substances sold as consumer products. Among the basic tasks of the FDA are research, inspection and licensing of drugs for manufacturing and distribution. This agency is in charge of administering Food, Drug and Cosmetic Act (*q.v.*).

Food, Drug and Cosmetic Act. Federal Act of 1938 prohibiting the transportation in interstate commerce of adulterated or misbranded food, drugs and cosmetics. Act is administered by Food and Drug Administration.

Foot. A measure of length containing twelve inches or one-third of a yard. The base, bottom, or foundation of anything; and, by metonymy, the end or termination; as the foot of a fine. The terminal part of the leg. That part of leg at or below ankle joint; including the arch. *Trustees for Arch Preserver Shoe Patents v. James McCreeery & Co., Cust. & Pat.App., 49 F.2d 1068, 1071. See also* Foundation.

Foot acre. One acre of coal one foot thick.

Foot-frontage rule. Under rule, assessment is confined to actual frontage on line of improvement, and depth of lot, number or character of improvements, or value thereof, is immaterial.

Footgeld /fútgèld/. In the forest law, an amercement for not cutting out the ball or cutting off the claws of a dog's feet (*expeditating*, him). To be quit of *footgeld* is to have the privilege of keeping dogs in the forest *unlawed* without punishment or control.

Foot of the fine. At common law, the fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2 Bl.Comm. 351.

Foot pound. A unit of energy, or work, equal to work done in raising one pound avoirdupois against the force of gravity to the height of one foot.

Footprints. In the law of evidence, impressions made upon earth, snow, or other surface by the feet of persons, or by their shoes, boots, or other foot covering.

For. Fr. In French law, a tribunal. *Le for interieur*, the interior forum; the tribunal of conscience.

In behalf of, in place of, in lieu of, instead of, representing, as being which, or equivalent to which, and sometimes imports agency. *Medler v. Henry*, 44 N.M. 63, 97 P.2d 661, 662. During; throughout; for the period of, as, where a notice is required to be published "for" a certain number of weeks or months. Duration, when put in connection with time. *Progressive Building & Loan Ass'n v. McIntyre*, 169 Tenn. 491, 89 S.W.2d 336, 337.

In consideration for; as an equivalent for; in exchange for; in place of; as where property is agreed to be given "for" other property or "for" services.

Belonging to, exercising authority or functions within, as where one describes himself as "a notary public in and for the said county."

By reason of; with respect to; for benefit of; for use of; in consideration of. The cause, motive or occasion of an act, state or condition. *American Ins. Co. v. Naylor*, 103 Colo. 461, 87 P.2d 260, 265. Used in sense of "because of," "on account of," or "in consequence of." *Kelly v. State Personnel Board of California*, 31 Cal. App.2d 443, 88 P.2d 264, 266. By means of, or growing out of.

It connotes the end with reference to which anything is, acts, serves, or is done. In consideration of which, in view of which, or with reference to which, anything is done or takes place. In direction of; with view of reaching; with reference to needs, purposes or uses of; appropriate or adapted to; suitable to purpose, requirement, character or state of.

For account of. Language introducing name of person entitled to receive proceeds of indorsed note or draft. *Equitable Trust Co. of New York v. Rochling*, 275 U.S. 248, 48 S.Ct. 58, 59, 72 L.Ed. 264.

Foraker Act /fórækær ákt/. A name usually given to the act of congress of April 12, 1900, 31 Stat.L. 77, c. 191 (48 U.S.C.A. § 731 et seq.), which provided civil government for Puerto Rico. See *Downes v. Bidwell*, 182 U.S. 244, 390, 21 S.Ct. 770, 45 L.Ed. 1088.

Foraneus /fóréyniýəs/. One from without; a foreigner; a stranger.

Forathe. In forest law, one who could make oath, i.e., bear witness for another.

Forbalca /fórbò(1)kə/. In old records, a forebalk; a balk (that is, an unplowed piece of land) lying forward or next the highway.

Forbannitus /fórbánētəs/. A pirate; an outlaw; one banished.

Forbarrer. L. Fr. To bar out; to preclude; hence, to estop.

Forbatudus. In old English law, the aggressor slain in combat.

Forbearance. Refraining from doing something that one has a legal right to do. Giving of further time for repayment of obligation or agreement not to enforce claim at its due date. *Crestwood Lumber Co. v. Citizens Sav. & Loan Ass'n*, 83 C.A.3d 819, 148 Cal.Rptr. 129, 131. A delay in enforcing a legal right. Act by which creditor waits for payment of debt due him by debtor after it becomes due. *Upton v. Gould*, 64 Cal.App.2d 814, 149 P.2d 731, 733.

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to "act."

Within usury law, term signifies contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable. *Hafer v. Spaeth*, 22 Wash.2d 378, 156 P.2d 408, 411.

As regards forbearance as a form of consideration, see *Consideration*.

For cause. With respect to removal from office "for cause", means for reasons which law and public policy recognize as sufficient warrant for removal and such cause is "legal cause" and not merely a cause which the appointing power in the exercise of discretion may deem sufficient. *State ex rel. Nagle v. Sullivan*, 98 Mont. 425, 40 P.2d 995, 998. They do not mean removal by arbitrary or capricious action but there must be some cause affecting and concerning ability and fitness of official to perform duty imposed on him. The cause must be one in which the law and sound public policy will recognize as a cause for official no longer occupying his office. *Napolitano v. Ward*, D.C.Ill., 317 F.Supp. 79, 81.

Force. Power, violence, compulsion, or constraint exerted upon or against a person or thing. *Landry v. Daley*, D.C.Ill., 280 F.Supp. 938, 954. Power dynamically considered, that is, in motion or in action; constraining power, compulsion; strength directed to an end. Commonly the word occurs in such connections as to show that unlawful or wrongful action is meant; e.g. forcible entry.

Power statically considered; that is at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is "in force."

In old English law, a technical term applied to a species of accessory before the fact.

See also Constructive force; Excessive force; Intervening force; Reasonable force.

Deadly force. Force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force. Model Penal Code, § 3.11.

Unlawful force. Force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this Section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm. Model Penal Code, § 3.11(1). *See also* Battery.

Force and arms. A phrase used in common law pleading in declarations of trespass and in indictments, but now unnecessary, to denote that the act complained of was done with violence.

Force and fear. Called also "*vi metuque*" means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party.

Forced heirs. Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them (*e.g.*, person's spouse). *See* Election by spouse.

Forced sale. A sale made at the time and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. A sale which is not the voluntary act of the owner, such as to satisfy a debt, whether of a mortgage, judgment, tax lien, etc. Sale brought about in shorter time than normally required because of creditor's action. For comparable sale purposes in eminent domain proceedings, "forced sales" are those occurring as result of legal process, such as tax sale. *Colonial Pipeline Co. v. Gimbel*, 54 Md.App. 32, 456 A.2d 946, 952. *See also* Fire sale; Foreclosure; Judicial sale; Sale (*Tax-sale*); Sheriff's sale.

Force majeure /fòrs màzhastyúr/. Includes lightnings, earthquakes, storms, flood, sunstrokes, freezing, etc., wherein latter two can be considered hazards in contemplation of employer within compensation acts. *See also* Act of God; Vis major.

Force majeure /fòrs màzhúr/'màzhór/. Fr. In the law of insurance, superior or irresistible force. Such clause

is common in construction contracts to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. An oil and gas lease clause that provides that the lessee will not be held to have breached the lease terms while the lessee is prevented by *force majeure* (literally, "superior force") from performing. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance. *See also* Act of God; Vis major.

Forces /fòrsəz/. The military and naval power of the country.

Forcheapum /fòrchíypəm/. Pre-emption; forestalling the market.

Forcible. Effected by force used against opposition or resistance; obtained by compulsion or violence. *Offutt v. Liberty Mut. Ins. Co.*, 251 Md. 262, 247 A.2d 272, 276.

Forcible detainer. A summary, speedy and adequate statutory remedy for obtaining possession of premises by one entitled to actual possession. *Casa Grande Trust Co. v. Superior Court In and For Pinal County*, 8 Ariz. App. 163, 444 P.2d 521, 523. Exists where one originally in rightful possession of realty refuses to surrender it at termination of his possessory right. *Sayers & Muir Service Station v. Indian Refining Co.*, 266 Ky. 779, 100 S.W.2d 687, 689. Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer." *See also* Ejection; Eviction; Forcible entry and detainer; Process (*Summary process*).

Forcible entry. At common law, violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl.Comm. 148. Entry accompanied with circumstances tending to excite terror in the occupant, and to prevent him from maintaining his rights. *Barbee v. Winnsboro Granite Corporation*, 190 S.C. 245, 2 S.E.2d 737, 739. Angry words and threats of force may be sufficient. *Calidino Hotel Co. of San Bernardino v. Bank of America Nat. Trust & Savings Ass'n*, 31 Cal.App.2d 295, 87 P.2d 923, 931.

Every person is guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc.Cal. § 1159.

In many states, an entry effected without consent of rightful owner, or against his remonstrance, or under circumstances which amount to no more than a mere trespass, is now technically considered "forcible," while a detainer of the property consisting merely in the refusal to surrender possession after a lawful demand, is treated as a "forcible" detainer, the "force" required at common law being now supplied by a mere fiction.

See Ejection; Eviction; Forcible detainer; Forcible entry and detainer; Process (*Summary process*).

Forcible entry and detainer. A summary proceeding for restoring to possession of land by one who is wrongfully kept out or has been wrongfully deprived of the possession. *Wein v. Albany Park Motor Sales Co.*, 312 Ill.App. 357, 38 N.E.2d 556, 559. An action to obtain possession or repossession of real property which had been transferred from one to another pursuant to contract; such proceeding is not an action to determine ownership of title to property. *Behrle v. Beam*, 6 Ohio St.3d 41, 6 O.B.R. 61, 451 N.E.2d 237, 240. *See also* Ejectment; Eviction; Forcible detainer; Process (*Summary process*).

Forcible rape. Aggravated form of statutory rape made punishable by statute. *See also* Rape.

Forcible trespass. An invasion of the rights of another with respect to his personal property, of the same character, or under the same circumstances, which would constitute a "forcible entry and detainer" of real property at common law. It consists in taking or seizing the personal property of another by force, violence, or intimidation or in forcibly injuring it. There must be actual violence used, or such demonstration of force as is calculated to intimidate or tend to a breach of the peace. It is not necessary that the person be actually put in fear.

For collection. A form of indorsement on a note or check where it is not intended to transfer title to it or to give it credit or currency, but merely to authorize the transferee to collect the amount of it. Such an indorsement is restrictive. U.C.C. § 3-205(c).

Forda /fórdə/. In old records, a ford or shallow, made by damming or penning up the water.

Fordal /fórdəl/. A butt or headland, jutting out upon other land.

Fordanno /fördánow/. In old European law, he who first assaulted another.

Fore /fór/. Sax. Before. Fr. Out.

Forebearance. *See* Forbearance.

Foreclose /fórklówz/. To shut out; to bar; to terminate. Method of terminating mortgagor's right of redemption. *Hibernia Savings & Loan Soc. v. Lauffer*, 41 Cal.App.2d 725, 107 P.2d 494, 497. *See also* Foreclosure.

Foreclosure /fórklówzhər/. To shut out, to bar, to destroy an equity of redemption. *Anderson v. Barr*, 178 Okl. 508, 62 P.2d 1242, 1246. A termination of all rights of the mortgagor or his grantee in the property covered by the mortgage. The process by which a mortgagor of real or personal property, or other owner of property subject to a lien, is deprived of his interest therein. A proceeding in equity whereby a mortgagee either takes title to or forces the sale of the mortgagor's property in satisfaction of a debt. Procedure by which mortgaged property is sold on default of mortgagor in satisfaction of mortgage debt. If proceeds from sale fail to pay debt in full, mortgagee creditor may obtain a Deficiency judgment (*q.v.*).

A default under a security interest in personal property can be foreclosed by a judicial sale of collateral. U.C.C. § 9-501.

In common usage, refers to enforcement of lien, trust deed, or mortgage in any method provided by law.

See also Equity of redemption.

Statutory foreclosure. The term is sometimes applied to foreclosure by execution of a power of sale contained in the mortgage, without recourse to the courts, as it must conform to the provisions of the statute regulating such sales.

Strict foreclosure. A decree of strict foreclosure of a mortgage finds the amount due under the mortgage, orders its payment within a certain limited time, and provides that, in default of such payment, the debtor's right and equity of redemption shall be forever barred and foreclosed; its effect is to vest the title of the property absolutely in the mortgagee, on default in payment, without any sale of the property.

Foreclosure decree. Properly speaking, a decree ordering the strict foreclosure of a mortgage; but the term is also loosely and conventionally applied to a decree ordering the sale of the mortgaged premises and the satisfaction of the mortgage out of the proceeds.

Foreclosure sale. A sale of mortgaged property to obtain satisfaction of the mortgage out of the proceeds, whether authorized by a decree of the court or by a power of sale contained in the mortgage. *See also* Deficiency judgment; Forced sale.

Foregift /förgift/. A premium for a lease.

Foregoers /förgówərz/. Royal purveyors.

Forehand rent. In English law, rent payable in advance; or, more properly, a species of premium or bonus paid by the tenant on the making of the lease, and particularly on the renewal of leases by ecclesiastical corporations.

Foreign. Belonging to another nation or country; belonging or attached to another jurisdiction; made, done, or rendered in another state or jurisdiction; subject to another jurisdiction; operating or solvable in another territory; extrinsic; outside; extraordinary. Nonresident person, corporation, executor, etc.

As to *foreign* Administrator(-trix); Assignment; Attachment; Bill (*Bill of exchange*); Charity; Commerce; Corporation; County; Creditor; Divorce; Document; Domicile; Factor; Judgment; Jury; Minister; Plea; Port; State; Vessel, and Voyage, see those titles.

Foreign agent. Person who registers with the federal government as a lobbyist representing the interests (*e.g.* import quotas, tourism, foreign aid) of a foreign nation or corporation. See 22 U.S.C.A. § 611 et seq.

Foreign answer. In old English practice, an answer which was not triable in the county where it was made.

Foreign apposer /fóhrən əpówzər/. In England, an officer in the exchequer who examines the sheriff's *estreats*, comparing them with the records, and apposes

(interrogates) the sheriff as to each particular sum therein.

Foreign bill of exchange. Bill of exchange which is drawn in one state or country and payable in another state or country. *See also* Bill (*Bill of exchange*).

Foreign coins. Coins issued as money under the authority of a foreign government.

Foreign commerce. Trade between persons in the United States and those in a foreign country. *See also* Commerce; Foreign trade.

Foreign consulate. The office or headquarters of a consul who represents a foreign country in the United States.

Foreign corporation. A corporation doing business in one state though chartered or incorporated in another state is a foreign corporation as to the first state, and, as such, is required to consent to certain conditions and restrictions in order to do business in such first state. Rev. Model Bus. Corp. Act § 1.40. Under federal tax laws, a foreign corporation is one which is not organized under the laws of one of the states or territories of the United States. I.R.C. § 7701(a)(5). Service of process on foreign corporations is governed by Fed.R.Civil P. 4. *See also* Corporation; Controlled foreign corporation.

U.S. owned foreign corporation. A foreign corporation in which 50 percent or more of the total combined voting power or total value of the stock of the corporation is held directly or indirectly by U.S. persons. A U.S. corporation is treated as a U.S.-owned foreign corporation if dividend or interest income paid by such corporation is classified as foreign source under I.R.C. § 861.

Foreign courts. The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the states when their judgments or records are introduced in the courts of another.

Foreign diplomatic or consular offices. Officials appointed by a foreign government to protect the interest of its nationals in the United States. *See also* Foreign agent.

Foreign dominion. In English law, this means a country which at one time formed part of the dominions of a foreign state or potentate, but which by conquest or cession has become a part of the dominions of the British crown.

Foreigner. In old English law, this term, when used with reference to a particular city, designated any person who was not an inhabitant of that city. According to later usage, it denotes a person who is not a citizen or subject of the state or country of which mention is made, or any one owing allegiance to a foreign state or sovereign.

Person belonging to or under citizenship of another country.

Foreign exchange. Conversion of the money of one country into its equal of another country. Process by

which money of one country is used to pay balances due in another country.

Foreign exchange market. Institution through which foreign currencies are bought and sold.

Foreign exchange rate. The rate or price for which the currency of one country may be exchanged for the money of another country. *See also* Float.

Foreign immunity. The immunity of a foreign sovereign, its agencies or instrumentalities, from suit in United States courts. Federal court jurisdiction is limited to claims falling within one of the enumerated exceptions to the Foreign Sovereign Immunities Act of 1976. 28 U.S.C.A. §§ 1602-1607. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 109 S.Ct. 683, 102 L.Ed.2d 818.

Foreign judgment. *See* Judgment.

Foreign jurisdiction. Any jurisdiction foreign to that of the forum; *e.g.* of a sister state or another country. Also the exercise by a state or nation of jurisdiction beyond its own territory. Long-arm service of process is a form of such foreign or extraterritorial jurisdiction. *See* 28 U.S.C.A. § 1330. *See also* Foreign service of process.

Foreign laws. The laws of a foreign country, or of a sister state. In conflicts of law, the legal principles of jurisprudence which are part of the law of a sister state or nation. Foreign laws are additions to our own laws, and in that respect are called "*jus receptum*".

Foreign money. The currency or medium of exchange of a foreign country. *See also* Foreign exchange.

Foreign personal holding company (FPHC). A foreign corporation in which (1) 60 percent or more of the gross income for the taxable year is FPHC income and (2) more than 50 percent of the total combined voting power or the total value of the stock is owned, directly or indirectly, by five or fewer individuals who are U.S. persons (the U.S. group) at any time during the taxable year. The 60 percent of gross income test drops to 50 percent or more after the 60 percent requirement has been met for one tax year, until the foreign corporation does not meet the 50 percent test for three consecutive years or the stock ownership requirement is not met for an entire tax year.

Foreign personal representative. A personal representative of another jurisdiction. Uniform Probate Code, § 1-201(14).

Foreign proceeding. Proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization. Bankruptcy Code § 101. *See also* Foreign jurisdiction; Foreign service of process.

Foreign receiver. An official receiver appointed by a court of another state or nation.

Foreign representative. Duly selected trustee, administrator, or other representative of an estate in a foreign proceeding. Bankruptcy Code § 101.

Foreign service. The United States Foreign Service conducts relations with foreign countries through its representatives at embassies, missions, consulates general, consulates, and consular agencies throughout the world. These representatives and agencies report to the State Department.

Feudal law. In feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. Foreign service seems also to have been used for knight's service, or escuage uncertain.

Foreign service of process. Service of process for the acquisition of jurisdiction by a court in the United States upon a person in a foreign country is prescribed by Fed.R.Civil P. 4(i) and 28 U.S.C.A. § 1608. Service of process on foreign corporations is governed by Fed.R. Civil P. 4(d)(3).

Foreign states. Nations which are outside the United States. Term may also refer to another state; *i.e.* a sister state.

The term "foreign nations," as used in a statement of the rule that the laws of foreign nations should be proved in a certain manner, should be construed to mean all nations and states other than that in which the action is brought; and hence one state of the Union is foreign to another, in the sense of that rule.

A "foreign state" within statute providing for expatriation of American citizen who is naturalized under laws of foreign state is a country which is not the United States, or its possession or colony, an alien country, other than our own. *Kletter v. Dulles*, D.C.D.C., 111 F.Supp. 593, 598.

Foreign substance. Substance occurring in any part of the body or organism where it is not normally found, usually introduced from without. *Adams v. Great Atlantic & Pacific Tea Co.*, 251 N.C. 565, 112 S.E.2d 92, 94. A "foreign substance" within rule that a cause of action against physician who leaves a foreign substance in body does not begin until patient discovers or should have discovered the presence of such substance includes drugs and medicine which are introduced into the body and which are not organically connected or naturally related. *Rothman v. Silber*, 83 N.J.Super. 192, 199 A.2d 86, 89, 92.

Foreign tax credit or deduction. A U.S. citizen or resident who incurs or pays income taxes to a foreign country on income subject to U.S. tax may be able to claim some of these taxes as a deduction or a credit against the U.S. income tax. I.R.C. §§ 27 and 901-905.

Foreign trade. Commercial interchange of commodities between different countries; export and import trade. *Standard Oil Co. of New Jersey v. United States*, 29 Cust. & Pat.App. 82, 120 F.2d 340, 342. *See also* Foreign commerce.

Foreign trade zone. Areas within the United States, but outside the customs zone, where foreign merchandise may be brought without formal customs entry and payment of duty for virtually any legal purpose including storage, grading, sampling, cleaning, or packaging. Duties are paid when the products enter the U.S. market. *See also* Free port.

Foreign will. Will of person not domiciled within state at time of death. *De Tray v. Hardgrove*, Tex.Com.App., 52 S.W.2d 239, 240.

Forejudge. In old English law and practice, to expel from court for some offense or misconduct. When an officer or attorney of a court was expelled for any offense, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court*.

To deprive or put out of a thing by the judgment of a court. To condemn to lose a thing.

To expel or banish.

Forejuder. In English practice, a judgment by which a man is deprived or *put out of* a thing; a judgment of expulsion or banishment.

Foreman or foreperson. The presiding member of a grand or petit jury, who speaks or answers for the jury.

Person designated by employer-management to direct work of employees; superintendent, overseer.

Fore-matron /fórmèytræn/. In a jury of women this word corresponds to the foreman of a jury.

Forensic. Belonging to courts of justice.

Forensic engineering. The application of the principles and practice of engineering to the elucidation of questions before courts of law. Practice by legally qualified professional engineers who are experts in their field, by both education and experience, and who have experience in the courts and an understanding of jurisprudence. A forensic engineering engagement may require investigations, studies, evaluations, advice to counsels, reports, advisory opinions, depositions and/or testimony to assist in the resolution of disputes relating to life or property in cases before courts, or other lawful tribunals.

Forensic linguistics. A technique concerned with in-depth evaluation of linguistic characteristics of text, including grammar, syntax, spelling, vocabulary and phraseology, which is accomplished through a comparison of textual material of known and unknown authorship, in an attempt to disclose idiosyncracies peculiar to authorship to determine whether the authors could be identical. *U.S. v. Clifford*, C.A.Pa., 704 F.2d 86. *See* Fed.Evid.R. 901. *See also* Comparative interpretation; Comparative stylistics; Comparison of handwriting.

Forensic medicine. That science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law

to arrive at a proper conclusion on a contested question affecting life or property.

Forensic pathology. That branch of medicine dealing with diseases and disorders of the body in relation to legal principles and cases.

Forensic psychiatry. That branch of medicine dealing with disorders of the mind in relation to legal principles and cases.

Forensis /fəˈrɛnsəs/. In Civil law, belonging to or connected with a court; forensic. *Forensis homo*, an advocate; a pleader of causes; one who practices in court.

Fore-oath /fɔˈrəʊθ/. Before the Norman Conquest, an oath required of the complainant in the first instance (in the absence of manifest facts) as a security against frivolous suits.

Foreschoke. Foresaken; disavowed.

Foreseeability. The ability to see or know in advance; e.g. the reasonable anticipation that harm or injury is a likely result from certain acts or omissions. *Emery v. Thompson*, 347 Mo. 494, 148 S.W.2d 479, 480. In tort law, the "foreseeability" element of proximate cause is established by proof that actor, as person of ordinary intelligence and prudence, should reasonably have anticipated danger to others created by his negligent act. *Northwest Mall, Inc. v. Lubri-Lon Intern., Inc.*, Tex.App. 14 Dist., 681 S.W.2d 797, 803. That which is objectively reasonable to expect, not merely what might conceivably occur. *Augenstine v. Dico Co., Inc.*, 1 Dist., 135 Ill. App.3d 273, 90 Ill.Dec. 314, 317, 481 N.E.2d 1225, 1228. See also Assumption of risk.

Foreseeable consequences. See Foreseeability.

Foreshore. The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide. According to the medium line between the greatest and least range of tide (spring tides and neap tides). See also Shore.

Foresight. Heedful thought for the future; reasonable anticipation of result of certain acts or omissions. *Emery v. Thompson*, 347 Mo. 494, 148 S.W.2d 479. See Foreseeability.

Forest. A tract of land covered with trees and one usually of considerable extent.

In old English law, a certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. A royal hunting-ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. The word is also used to signify a franchise or right, being the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose.

Forestage /fɔˈrɛstəj/. In old English law, a duty or tribute payable to the king's foresters.

Forestagium /fɔˈrɛstɛjɪəm/. In old English law, a duty or tribute payable to the king's foresters.

Forestall. In old English law, to intercept or obstruct a passenger on the king's highway. To beset the way of a tenant so as to prevent his coming on the premises. 3 Bl.Comm. 170. To intercept a deer on his way to the forest before he can regain it.

Forestaller. In old English law, obstruction; hindrance; the offense of stopping the highway; the hindering a tenant from coming to his land; intercepting a deer before it can regain the forest. Also one who forestalls; one who commits the offense of forestalling. 3 Bl. Comm. 170.

Forestalling. Obstructing the highway. Intercepting a person on the highway.

Forestalling the market. Securing control of commodities on way to market.

The act of the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or dissuading of persons from bringing their goods or provisions there; or persuading them to enhance the price when there. This was formerly an indictable offense in England, but is now abolished by St. 7 & 8 Vict., c. 24.

Forestarius /fɔˈrɛstəriəs/. In English law, a forester. An officer who takes care of the woods and forests. *De forestario apponendo*, a writ which lay to appoint a forester to prevent further commission of waste when a tenant in dower had committed waste.

Forest courts. In English law, courts instituted for the government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or *venison*, to the *vert* or greensward, and to the *covert* in which such deer were lodged. They consisted of the courts of attachments, of regard, of swainmote, and of justice-seat. Such courts are now obsolete. 3 Bl.Comm. 71.

Forester. In old English law, a sworn officer of the forest, appointed by the king's letters patent to walk the forest, watching both the vert and the venison, attaching and presenting all trespassers against them within their own bailiwick or walk. These letters patent were generally granted during good behavior; but sometimes they held the office in fee.

Person trained in forestry; employee of U.S. Forest Service.

Forest law. The system or body of old law relating to the royal forests. The last of the forest laws were repealed by the Wild Creatures and Forest Laws Act of 1971.

Forfang /fɔˈfæŋ/. In old English law, the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of them; also the reward fixed for such rescue.

Forfeit /fórfæt/. To lose, or lose the right to, by some error, fault, offense, or crime; or to subject, as property, to forfeiture or confiscation. To lose, in consequence of breach of contract, neglect of duty, or offense, some right, privilege, or property to another or to the State. *United States v. Chavez*, C.C.A.N.M., 87 F.2d 16, 19. To incur a penalty; to become liable to the payment of a sum of money, as the consequence of a certain act. It can be a loss of position or personal right, as well as property. *State v. Norton*, 57 Or.App. 679, 646 P.2d 53, 55.

To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, default, or omission. It is a deprivation (that is, against the will of the losing party), with the property either transferred to another or resumed by the original grantor.

See also Forfeiture; Seizure.

Forfeitable. Liable to be forfeited; subject to forfeiture for non-user, neglect, crime, etc.

Forfeiture /fórfætýr/. A comprehensive term which means a divestiture of specific property without compensation; it imposes a loss by the taking away of some preexisting valid right without compensation. *L & K Realty Co. v. R.W. Farmer Const. Co.*, Mo.App., 633 S.W.2d 274, 279. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Loss of some right or property as a penalty for some illegal act. Loss of property or money because of breach of a legal obligation (*e.g.* default in payment).

Forfeiture of property (including money, securities, and real estate) is one of the penalties provided for under certain federal and state criminal statutes (*e.g.*, RICO and Controlled Substances Acts). Such forfeiture provisions apply to property used in the commission of a crime under the particular statutes, as well as property acquired from the proceeds of the crime. *See, e.g.*, 18 U.S.C.A. §§ 981, 982 (criminal and civil forfeiture), 21 U.S.C.A. § 853 (forfeiture in drug cases).

In old English law, the loss of land by a tenant to his lord, as the consequence of some breach of fidelity. The loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed against him to whom they are forfeited.

See also Confiscate; Default; Divestiture; Foreclosure; Forfeit; Seizure.

Forfeiture of bond. A failure to perform the condition upon which obligor was to be excused from the penalty in the bond. *Hall v. Browning*, 71 Ga.App. 835, 32 S.E.2d 424, 427. With respect to a bail bond, occurs when the accused fails to appear for trial.

Forfeiture of marriage. A penalty incurred by a ward in chivalry who married without the consent or against the will of the guardian.

Forfeitures Abolition Act. Another name for the felony act of 1870, abolishing forfeitures for felony in England.

Forgabulum, or forgavel /förgæbylæm/. A quit-rent; a small reserved rent in money.

Forge. To fabricate by false imitation. *Carter v. State*, 135 Tex.Cr.R. 457, 116 S.W.2d 371, 377. To fabricate, construct, or prepare one thing in imitation of another thing, with the intention of substituting the false for the genuine, or otherwise deceiving and defrauding by the use of the spurious article. To counterfeit or make falsely. Especially, to make a spurious written instrument with the intention of fraudulently substituting it for another, or of passing it off as genuine; or to fraudulently alter a genuine instrument to another's prejudice; or to sign another person's name to a document, with a deceitful and fraudulent intent. *See* Counterfeiter; Forgery; Fraud.

Forgery. The false making or the material altering of a document with the intent to defraud. A signature of a person that is made without the person's consent and without the person otherwise authorizing it. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor: (a) alters any writing of another without his authority; or (b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or (c) utters any writing which he knows to be forged in a manner specified in paragraph (a) or (b). Model Penal Code, § 224.1. *See also* MPC § 241.7, "Tampering with or Fabricating Physical Evidence".

Crime includes both act of forging handwriting of another and act of uttering as true and genuine any forged writing knowing same to be forged with intent to prejudice, damage or defraud any person. *State v. May*, 93 Idaho 343, 461 P.2d 126, 129. Crime is committed when one makes or passes a false instrument with intent to defraud, and the element of loss or detriment is immaterial. *People v. McAffery*, 182 Cal.App.2d 486, 6 Cal.Rptr. 333, 337. The false making of an instrument, which purports on face of it to be good and valid for purposes for which it was created, with a design to defraud any person or persons. *State v. Goranson*, 67 Wash.2d 456, 408 P.2d 7, 9.

See also Alteration; Counterfeit; False making; Falsify; Fraud; Imitation; Raised check; Utter; Uttering a forged instrument.

Evidence. The fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or the deceitful arrangement of genuine facts or things, in such a manner as to create an erroneous impression or a false inference in the minds of those who may observe them.

Forherda /fórhærdæ/. In old English records, a hermland, headland, or foreland.

For hire or reward. To transport passengers or property for a fare, charge, or rate to be paid by such passengers, or persons for whom such property is transported, to owner or operator. *Michigan Consol. Gas Co. v. Sohio Petroleum Co.*, 321 Mich. 102, 32 N.W.2d 353, 356. *See also* Carrier.

Fori disputationes /fóray dispýtèyshiyówniyz/. In the civil law, discussions or arguments before a court.

Forinsecus /fórinsekəs/. Lat. Foreign; exterior; outside; extraordinary.

Servitium forinsecum, the payment of aid, scutage, and other extraordinary military services. *Forinsecum manerium*, the manor, or that part of it which lies outside the bars or town, and is not included within the liberties of it.

Forinsic /fórinsek/. In old English law, exterior; foreign; extraordinary. In feudal law, the term "forinsic services" comprehended the payment of extraordinary aids or the rendition of extraordinary military services, and in this sense was opposed to "intrinsic services."

Foris /fóras/. Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

Forisbanitus /fórasbænətəs/. In old English law, banished.

Forisfacere /fórasféysəriy/. Lat. To forfeit; to lose an estate or other property on account of some criminal or illegal act. To confiscate.

To act beyond the law, *i.e.*, to transgress or infringe the law; to commit an offense or wrong; to do any act against or beyond the law.

Forisfacere, i.e., extra legem seu consuetudinem facere /fórasféysəriy, id èst, èkstrè liyjam syúw kónswètyúwdənəm féysəriy/. *Forisfacere, i.e.*, to do something beyond law or custom.

Forisfactum /fórasfæktəm/. Forfeited. *Bona forisfacta*, forfeited goods. A crime.

Forisfactura /fórasfæktýrə/. A crime or offense through which property is forfeited. A fine or punishment in money.

Forfeiture; the loss of property or life in consequence of crime.

Forisfactura plena /fórasfæktýrə plíynə/. A forfeiture of all a man's property. Things which were forfeited.

Forisfactus /fórasfæktəs/. A criminal. One who has forfeited his life by commission of a capital offense.

Forisfactus servus /fórasfæktəs sèrvəs/. A slave who has been a free man, but has forfeited his freedom by crime.

Forisfamiliare /fórasfæmiliyériy/. In old English and Scotch law, literally, to put out of a family (*foris familiam ponere*). To portion off a son, so that he could have no further claim upon his father. To emancipate, or free from paternal authority.

Forisfamiliated /fórasfæmiliyeytəd/. In old English law, portioned off. A son was said to be forisfamiliated (*forisfamiliari*) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request or with the free consent of the son himself, who expressed himself satisfied with such portion.

Forisfamiliatus /fórasfæmiliyeytəs/. In old English law, put out of a family; portioned off; emancipated; forisfamiliated.

Forisjudicatio /fórasjúwdækéysh(iy)ow/. In old English law, forejudge. A forejudgment. A judgment of court whereby a man is put out of possession of a thing.

Forisjudicatus /fórasjúwdækéyštəs/. Forejudged; sent from court; banished. Deprived of a thing by judgment of court.

Forisjurare /fórasjèrériy/. To forswear; to abjure; to abandon.

Provinciam forisjurare /prəvínsh(iy)əm fórasjèrériy/. To forswear the country.

Forisjurare parentilam /fórasjèrériy pərəntələm/. To remove oneself from parental authority. The person who did this lost his rights as heir.

Forjudge /fòrjáj/. *See* Forejudge.

Forjurer. L. Fr. In old English law, to forswear; to abjure.

Forjurer royale. To abjure the realm.

Form. A model or skeleton of an instrument to be used in a judicial proceeding or legal transaction, containing the principal necessary matters, the proper technical terms or phrases and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case or transaction.

In contradistinction to "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes. Antithesis of "substance."

Common form, solemn form. See Probate.

Form of the statute. This expression means the words, language, or frame of a statute, and hence the inhibition or command which it may contain; used in the phrase (in criminal pleading) "against the form of the statute in that case made and provided."

Forms of action. This term is the general designation of the various species or kinds of personal actions known to the common law, such as trover, trespass, debt, assumpsit, etc., and also to the general classification of actions as those in "equity" or "law". These differ in their pleadings and evidence, as well as in the circumstances to which they are respectively applicable. Under Rules of Civil Procedure (applicable in federal and most state courts) there is now only one form of action known as a "civil action," Fed.R.Civ.Proc., Rule 2. *See also* Forms of action.

Matter of form. In pleadings, indictments, affidavits, conveyances, etc., matter of form (as distinguished from matter of substance) is all that relates to the mode, form, or style of expressing the facts involved, the choice or arrangement of words, and other such particulars, without affecting the substantial validity or sufficiency of the instrument, or without going to the merits.

Form 10-K. Financial reporting form required to be filed annually with SEC by publicly traded corporations.

Form 10-Q. Financial reporting form required to be filed quarterly with SEC by publicly traded corporations. Such is less comprehensive than Form 10-K.

Forma. Lat. Form; the prescribed form of judicial proceedings.

Forma dat esse /fórmə dát ésiy/. Form gives being. Called "the old physical maxim."

Forma et figura iudicii /fórmə èt figyúrà juwdishiyay/. The form and shape of judgment or judicial action. 3 Bl.Comm. 271.

Formal. Relating to matters of form; as, "formal defects"; inserted, added, or joined *pro forma*. See Form; Parties.

Formal contract. A written contract or agreement as contrasted with an oral or informal contract or agreement. Historically, a formal contract was under seal; though this is generally no longer required. See also Contract.

Forma legalis forma essentialis /fórmə ləgéyləs fórmə əsènsiyéyləs/. Legal form is essential form.

Formalities. In England, robes worn by the magistrates of a city or corporation, etc., on solemn occasions.

Formality. The conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity. Term generally refers to "procedure" in contrast to "substance".

Formal parties. See Parties.

Forma non observata, infertur adnullatio actus /fórmə nòn òbzàrvéytə, infàrtər àdnələysh(iy)ow àktəs/. Where form is not observed, a nullity of the act is inferred. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity.

Forma pauperis /fórmə pópəras/. See Appeal in forma pauperis; In forma pauperis.

Formata /forméytə/. In canon law, canonical letters.

Formata brevia /forméytə bríyviyà/. Formed writs; writs of form. See Brevia formata.

Formed action. An action for which a set form of words is prescribed, which must be strictly adhered to. Such are now generally obsolete. See Forms of action.

Formed design. In criminal law, and particularly with reference to homicide, this term means a deliberate and fixed intention to kill, whether directed against a particular person or not. See also Premeditation.

Formedon /fórmədòn/. An ancient writ in English law which was available for one who had a right to lands or tenements by virtue of a gift in tail. It was in the nature of a writ of right, and was the highest action that a tenant in tail could have; for he could not have an absolute writ of right, that being confined to such as claimed in fee-simple, and for that reason this writ of formedon was granted to him by statute and was emphatically called "his" writ of right. The writ was distinguished into three species, viz.: Formedon in the descender, in the remainder, and in the reverter. It was abolished in England by St. 3 & 4 Wm. IV, c. 27. 3 Bl.Comm. 191.

Formedon in the descender /fórmədòn in ðə dəséndər/. A writ of formedon which lay where a gift was made in tail, and the tenant in tail alienated the lands or was disseised of them and died, for the heir in tail to recover them, against the actual tenant of the freehold. 3 Bl.Comm. 192.

Formedon in the remainder /fórmədòn in ðə rəméyndər/. A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 Bl.Comm. 192.

Formedon in the reverter /fórmədòn in ðə rəvərtər/. A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee or his heirs without issue of his body, the reversion fell in upon the donor, his heirs or assigns. In such case, the reversioner had this writ to recover the lands. 3 Bl.Comm. 192.

Former acquittal /fórmər əkwítəl/. See Autrefois.

Former adjudication. An adjudication in a former action. Either a final determination of the rights of the parties or an adjudication of certain questions of fact. Johnson v. Fontana County Fire Protection Dist., 15 Cal.2d 380, 101 P.2d 1092, 1097; Johnson v. Fontana County Fire Protection Dist., Cal.App., 87 P.2d 426, 430. See Res (*Res judicata*).

Former jeopardy. Also called "double jeopardy." Plea of "former jeopardy," that a person cannot be tried for an offense more than once, is fundamental common law and constitutional right of defendant, affording protection against the defendant being again tried for the same offense, and not against the peril of second punishment. Fifth Amendment of U.S.Const. However, prosecution by both the state and federal governments is not barred by the constitutional protection against double jeopardy. Bartkus v. Illinois, 359 U.S. 121, 79 S.Ct. 676, 3 L.Ed.2d 684. See also Double jeopardy.

Former proceedings. Term used in reference to action taken earlier and its result in determining whether present proceeding is barred by *res judicata*.

Former recovery. Recovery in a former action. See *Res (Res judicata)*.

Former statements. As used in evidence, declarations made by a party or witness at an earlier time. Fed. Evid.R. 613.

Former testimony. In evidence, testimony given by party or witness at an earlier trial or hearing and which, under certain conditions, may be used in present proceeding. Fed.Evid.R. 613.

Forms of action. Forms of action governed common law pleading and were the procedural devices used to give expression to the theories of liability recognized by the common law. Failure to analyze the cause of action properly, to select the proper theory of liability and to choose the appropriate procedural mechanism or forms of action could easily result in being thrown out of court. A plaintiff had to elect his remedy in advance and could not subsequently amend his pleadings to conform to his proof or to the court's choice of another theory of liability. According to the relief sought, actions have been divided into three categories: real actions were brought for the recovery of real property; mixed actions were brought to recover real property and damages for injury to it; personal actions were brought to recover debts or personal property, or for injuries to personal, property, or contractual rights. The common law actions are usually considered to be eleven in number: trespass, trespass on the case, trover, ejectment, detinue, replevin, debt, covenant, account, special assumpsit, and general assumpsit.

Under the Rules of Civil Procedure (applicable in the federal and most state courts) there is now only one form of action known as a "civil action". Fed.R.Civil P., Rule 2.

Formula. In common-law practice, a set form of words used in judicial proceedings. In the civil law, an action.

Formula deal. An agreement between motion picture distributors and independent or affiliated circuits to exhibit a feature in all theatres at specified percentage of national gross receipts realized from such feature by all theatres in the United States. *U. S. v. Paramount Pictures*, D.C.N.Y., 66 F.Supp. 323, 333, 347.

Formulae /fórmýæliý/. In Roman law, when the *legis actiones* were proved to be inconvenient, a mode of procedure called "*per formulas*" (i.e., by means of *formulæ*), was gradually introduced, and eventually the *legis actiones* were abolished by the *Lex Æbutia*, B.C. 164, excepting in a very few exceptional matters. The *formulae* were four in number, namely: (1) The *Demonstratio*, wherein the plaintiff stated, i.e., showed, the facts out of which his claim arose; (2) the *Intentio*, where he made his claim against the defendant; (3) the *Adjudicatio*, wherein the *judex* was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties; and (4) the

Condemnatio, in which the *judex* was authorized and directed to condemn or to acquit according as the facts were or were not proved. These *formulae* were obtained from the magistrate (*in jure*), and were thereafter proceeded with before the *judex (in judicio)*.

Formula instruction. A jury instruction intended to be complete statement of law upon which jury may base verdict. *Harvey v. Aceves*, 115 Cal.App. 333, 1 P.2d 1043, 1045. An instruction which advises the jury that under certain facts therein hypothesized their verdict should be for one of the parties. *McFatrige v. Harlem Globe Trotters*, 69 N.M. 271, 365 P.2d 918, 922. See Jury instructions.

Formularies /fórmýæləriýz/. Collections of *formulae*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe.

Fornagium /fórnéýjiýəm/. The fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*), or for a commission to use his own.

Fornication. Sexual intercourse other than between married persons. *State v. Cook*, App., 139 Ariz. 406, 678 P.2d 987, 989. Further, if one of the persons be married and the other not, it is fornication on the part of the latter, though adultery for the former. In some jurisdictions, however, by statute, it is adultery on the part of both persons if the woman is married, whether the man is married or not. This offense, which is variously defined by state statutes, is very seldom enforced. See also Adultery; Illicit cohabitation.

Fornix /fórnæks/. Lat. A brothel; fornication.

Foro /fórow/. In Spanish law, the place where tribunals hear and determine causes,—*exercendarum litium locus*.

Foros /fórows/. In Spanish law, emphyteutic rents.

Forprise /fórpriýz/. An exception; reservation; excepted; reserved. Anciently, a term of frequent use in leases and conveyances. In another sense, the word is taken for any exaction.

For purpose of. With the intention of.

Forschel. A strip of land lying next to the highway.

Forspeaker /fórspiýkər/. An attorney or advocate in a cause.

Forspeca /fórspiýkə/. In old English law, prolocutor; paranympus.

Forstal /fórstól/. See Forestall.

Forstellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus /forstæliýəs èst pópərəm deprésər èt tówsh(íý)əs kəmyúwnətéýdəs èt pætriýiy pábləkəs inəmáýkəs/. A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.

Forswear /fórswér/. In criminal law, to make oath to that which the deponent knows to be untrue. This term is wider in its scope than "perjury," for the latter, as a

technical term, includes the idea of the oath being taken before a competent court or officer, and relating to a material issue, which is not implied by the word "for-swear." See *Perjury*.

Fort. This term means something more than a mere military camp, post, or station. The term implies a fortification, or a place protected from attack by some such means as a moat, wall, or parapet.

Fortalice, or fortelace /fórtələs/. A fortress or place of strength, which anciently did not pass without a special grant.

Fortaxed /fórtáks/. Wrongly or extortionately taxed.

For that. In pleading, words used to introduce the allegations of a declaration. "For that" is a positive allegation; "For that whereas" is a recital. Such words are not required in federal court pleadings nor in the majority of states that have adopted Rules of Civil Procedure.

For that whereas. In pleading, formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. In trespass, where there was no recital, the expression used was, "For that." Such words are not required in federal court pleadings nor in the majority of states that have adopted Rules of Civil Procedure.

Forthcoming bond. A bond conditioned on the forthcoming of property to answer such judgment as may be entered. If the property be forthcoming, no liability ensues. *U. S. Fidelity & Guaranty Co. v. Sabath*, 286 Ill.App. 320, 3 N.E.2d 330, 335. A bond given to a sheriff who has levied on property, conditioned that the property shall be forthcoming, *i.e.*, produced, when required. On the giving of such bond, the goods are allowed to remain in the possession of the debtor.

Forthwith. Immediately; without delay; directly; within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch. *U. S. ex rel. Carter v. Jennings*, D.C.Pa., 333 F.Supp. 1392, 1397. Within such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished. The first opportunity offered.

Fortia /fórsh(iy)ə/. Force. In old English law, force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counseling in any way, or commanding the act to be done.

Fortia frisca /fórsh(iy)ə frískə/. Fresh force (*q.v.*).

Fortility /fórtíltiy/. In old English law, a fortified place; a castle; a bulwark.

Fortior /fórshiyər/. Lat. Stronger. A term applied, in the law of evidence, to that species of presumption, arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party.

Fortior est custodia legis quam hominis /fórshiyər èst kástówdiyə líyjes kwəm hómənəs/. The custody of the law is stronger than that of man.

Fortior et potentior est dispositio legis quam hominis /fórshiyər èt póténshiyər èst dispázish(iy)əw líyjes kwəm hómənəs/. The disposition of the law is of greater force and effect than that of man. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract.

Fortiori /fórshiyóray/. See *A fortiori*.

Fortis /fórtəs/. Lat. Strong. *Fortis et sana*, strong and sound; staunch and strong; as a vessel.

Fortlett /fórtlèt/. A place or port of some strength; a little fort.

Fortuit /fórtwiy/. In French law, accidental; fortuitous. *Cas fortuit*, a fortuitous event. *Fortuitement*, accidentally; by chance; casually.

Fortuitous /fortyúwətəs/. Happening by chance or accident. Occurring unexpectedly, or without known cause. Accidental; undesigned; adventitious. Resulting from unavoidable physical causes.

Fortuitous collision /fortyúwədəs kəlízhən/. In maritime law, the accidental running foul of vessels.

Fortuitous event /fortyúwədəs əvént/. An event happening by chance or accident. That which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent. For purposes of an all risk insurance policy, an event which occurs accidentally, as a lay-person, and not a technician or scientist, would understand that term. It is an event which happens by chance, unexpectedly, or without known cause; one which is undesigned or unplanned. *Standard Structural Steel Co. v. Bethlehem Steel Corp.*, D.C.Conn., 597 F.Supp. 164, 193.

Fortuna /fórtýúwnə/. Lat. Fortune; also treasure-trove.

Fortunam faciunt judicem /fórtýúwnəm féys(h)iyənt júwdəsəm/. They make fortune the judge. Spoken of the process of making partition among coparceners by drawing lots for the several purparts.

Fortune teller. One who professes to tell future events in the life of another.

In English law, persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds or disorderly persons. 4 Bl.Comm. 62.

Fortunium /fórtýúwniyəm/. In old English law, a tournament or fighting with spears, and an appeal to fortune therein.

Forty. In land laws and conveyancing, in those regions where grants, transfers, and deeds are made with reference to the subdivisions of the government survey, this term means forty acres of land in the form of a square, being the tract obtained by quartering a section of land (640 acres) and again quartering one of the quarters.

Forty-days court. In old English forest law, the court of attachment in forests, or woodmote court.

Forum /fórem/. Lat. A court of justice, or judicial tribunal; a place of jurisdiction; a place of litigation; an administrative body. Particular place where judicial or administrative remedy is pursued. *See also* Venue.

In Roman law, the market place, or public paved court, in the city of Rome, where such public business was transacted as the assemblies of the people and the judicial trial of causes and where also elections, markets, and the public exchange were held.

Forum actus /fórem áktəs/. The forum of the act. The forum of the place where the act was done which is now called in question.

Forum conscientiae /fórem kóns(h)iyénshiyiy/. The forum or tribunal of conscience.

Forum contentiosum /fórem kánténshiyówzəm/. A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 Bl.Comm. 211.

Forum contractus /fórem kántráktəs/. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction.

Forum conveniens /fórem kánviyn(i)yènz/. The state or judicial district in which an action may be most appropriately brought, considering the best interest of the parties and the public. *Compare* Forum non conveniens.

Forum domesticum /fórem dóméstəkəm/. A domestic forum or tribunal. The visitatorial power is called a "forum domesticum," calculated to determine, sine strepitu, all disputes that arise within themselves.

Forum domicilii /fórem dō(w)məsīliiyay/. The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction.

Forum ecclesiasticum /fórem əkliyziyástəkəm/. An ecclesiastical court. The spiritual jurisdiction, as distinguished from the secular.

Forum ligeantiae rei /fórem lijiyénshiyiy riyay/. The forum of defendant's allegiance. The court or jurisdiction of the country to which he owes allegiance.

Forum non conveniens /fórem nòn kánviyn(i)yènz/. Term refers to discretionary power of court to decline jurisdiction when convenience of parties and ends of justice would be better served if action were brought and tried in another forum. Johnson v. Spider Staging Corp., 87 Wash.2d 577, 555 P.2d 997, 999, 1000. See 28 U.S.C.A. § 1404.

The rule is an equitable one embracing the discretionary power of a court to decline to exercise jurisdiction which it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. *Leet v. Union Pac. R. Co.*, 25 Cal.2d 605, 155 P.2d 42, 44. The doctrine presupposes at least two forums in which the defendant is amenable to

process and furnishes criteria for choice between such forums. *Wilson v. Seas Shipping Co.*, D.C.Pa., 78 F.Supp. 464, 465. In determining whether doctrine should be applied, court should consider relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, cost of obtaining attendance of willing witnesses, possibility of view of premises, and all other practical problems that make trial easy, expeditious and inexpensive. *Di Lella v. Lehigh Val. R. Co.*, D.C.N.Y., 7 F.R.D. 192, 193. *See also* Change of venue; Forum conveniens.

Forum originis /fórem ərjənəs/. The court of one's nativity. The place of a person's birth, considered as a place of jurisdiction.

Forum regium /fórem riyj(iy)əm/. The king's court.

Forum rei /fórem riyay/. This term may mean either (1) the forum of the defendant, that is, of his residence or domicile; or (2) the forum of the *res* or thing in controversy, that is, of the place where the property is situated. The ambiguity springs from the fact that *rei* may be the genitive of either *reus* or *res*.

Forum rei gestae /fórem riyay jéstiy/. The forum or court of a *res gesta* (thing done); the place where an act is done, considered as a place of jurisdiction and remedy.

Forum rei sitae /fórem riyay sáytiy/. The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction.

Forum seculare /fórem səkyələríy/. A secular, as distinguished from an ecclesiastical or spiritual, court.

Forum selection clause. A clause in a contract preselecting a particular forum, such as a given state, country, court or administrative proceeding, for the resolution of a dispute. Usually upheld unless the clause is designed to discourage litigation.

Forum shopping. Such occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict.

For use. For the benefit or advantage of another. Thus, where an assignee is obliged to sue in the name of his assignor, the suit is entitled "A. for use of B. v. C." For enjoyment or employment without destruction. A loan "for use" is one in which the bailee has the right to use and enjoy the article, but without consuming or destroying it, in which respect it differs from a loan "for consumption."

For value. *See* Holder.

For value received. *See* Value (*Value received*).

Forward. To send forward; to send toward the place of destination; to transmit. To ship goods by common carrier. *See* Forwarder.

Forward contract. An agreement to sell a commodity at a fixed future date but at a price set at the time the contract is written. *In re Gold Coast Seed Co.*, C.A.Cal., 751 F.2d 1118, 1119.

Forwarder. Person or business whose business it is to receive goods for further handling by way of warehousing, packing, carload shipping, delivery, etc. *See* Forwarding agent; Freight forwarder.

Forwarding agent. Freight forwarder who assembles less than carload shipments (small shipments) into carload shipments, thus taking advantage of lower freight rates. Company or individual whose business it is to receive and ship merchandise for others. *See* Forwarder.

Forward rate. The rate of exchange between two currencies being bought and sold for delivery at a future date.

For whom it may concern. Salutation used when particular name of addressee or recipient is unknown. Phrase creates presumption of intention on part of named insured to cover any persons who may have an insurable interest in the property.

Fossa /fósə/. In the civil law, a ditch; a receptacle of water, made by hand.

In old English law, a ditch. A pit full of water, in which women committing felony were drowned. A grave or sepulcher.

Fossagium /föséj(iy)əm/. In old English law, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

Fossatorum operatio /föstórəm òpəréysh(iy)ow/. In old English law, fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches round a city or town, for which some paid a contribution, called "*fossagium*."

Fossatum /fəsétəm/. A dyke, ditch, or trench; a place inclosed by a ditch; a moat; a canal.

Fosterage /fóstərəj/. Care of a foster child, brother, sister, parent, etc.—one considered as holding the relationship indicated in consequence of nursing and rearing, though not related by blood. In *re* Norman's Estate, 209 Minn. 19, 295 N.W. 63, 66.

Foster child. Child whose care, comfort, education and upbringing has been left to persons other than his natural parents. *See* Foster parent.

Foster home. A home for children without parents or who have been taken from their parents.

Fostering. An ancient custom in Ireland, in which persons put away their children to fosterers. Fostering was held to be a stronger alliance than blood, and the foster children participated in the fortunes of their foster fathers.

Fosterland. Land given, assigned, or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, etc.

Fosterlean /fóstarliyn/. The remuneration fixed for the rearing of a foster child; also the jointure of a wife.

Foster parent. One who has performed the duties of a parent to the child of another by rearing the child as his or her own child. *See* Foster child.

Foul bill of lading. Type of bill of lading which shows on its face that the goods were damaged or that there was a shortage at the time of shipment.

Found. A person is said to be "found" within a state for purposes of service of process when actually present therein. But only if a person is in a place voluntarily and not by reason of plaintiff's fraud, artifice, or trick for purpose of obtaining service. *Shields v. Shields*, 115 Mont. 146, 139 P.2d 528, 530, 531. It does not necessarily mean physical presence; *e.g.* defendant who, after removal of action for breach of contract to federal court, entered general appearance, defended on the merits, and filed counterclaim, was "found" in the district. *Freeman v. Bee Mach. Co.*, Mass., 319 U.S. 448, 63 S.Ct. 1146, 1149, 87 L.Ed. 1509. As applied to a corporation it is necessary that it be doing business in such state through an officer or agent or by statutory authority in such manner as to render it liable then to suit and to constructive or substituted service of process. A corporation is "found" in a district for venue purposes if it is subject to personal jurisdiction in that district. *Stith v. Manor Baking Co.*, D.C.Mo., 418 F.Supp. 150, 155. *See also* Locate; Service (*Service of process*).

Foundation. Permanent fund established and maintained by contributions for charitable, educational, religious, research, or other benevolent purpose. An institution or association given to rendering financial aid to colleges, schools, hospitals, and charities and generally supported by gifts for such purposes.

The founding or building of a college or hospital. The incorporation or endowment of a college or hospital is the foundation; and he who endows it with land or other property is the founder. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629; *Seagrave's Appeal*, 125 Pa. 362, 17 A. 412; *Union Baptist Ass'n v. Huhn*, 7 Tex.Civ.App. 249, 26 S.W. 755.

Preliminary questions to witness to establish admissibility of evidence. "Laying foundation" is a prerequisite to the admission of evidence at trial. It is established by testimony which identifies the evidence sought to be admitted and connects it with the issue in question. *Taylor v. State*, Wyo., 642 P.2d 1294, 1295. *See, e.g.*, *Fed.Evid.R.* 104.

See also Charitable foundation; Endowment.

Founded. Based upon; arising from, growing out of, or resting upon; as in the expressions "founded in fraud," "founded on a consideration," "founded on contract," and the like.

Founded on. To serve as a base or basis for.

Founder. The person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment. *See* Foundation.

Founders' shares. In English Company Law, shares issued to the founders of (or vendors to) a public company as a part of the consideration for the business, or

concession, etc., taken over, and not forming a part of, the ordinary capital. As a rule, such shares only participate in profits after the payment of a fixed minimum dividend on paid-up capital.

Foundling. A deserted or abandoned infant; a child found without a parent or guardian, its relatives being unknown.

Foundling hospitals. Charitable institutions which exist in many European countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections.

Four /fūr/. Fr. In old French law, an oven or bakehouse. *Four banal*, an oven, owned by the seignior of the estate, to which the tenants were obliged to bring their bread for baking. Also the proprietary right to maintain such an oven.

Fourcher /fürshéy/. Fr. To fork. This was a method of delaying an action anciently resorted to by defendants when two of them were joined in the suit. Instead of appearing together, each would appear in turn and cast an *essoin* for the other, thus postponing the trial.

Four corners. The face of a written instrument.

Four corners rule. Under "four corners rule", intention of parties, especially that of grantor, is to be gathered from instrument as a whole and not from isolated parts thereof. *Davis v. Andrews*, Tex.Civ.App., 361 S.W.2d 419, 423.

Fourierism /füriyərizəm/fór'/. A form of socialism.

401(k) plan. A savings plan established by corporations for the benefit of employees. Such a plan allows employees to defer pre-tax income on a certain portion of their gross salary and invest the funds in stocks, bonds, or other investment tools. In addition, many companies match a percentage of the employees' contributions. The contributions and earnings from such are accumulated tax free until such time as the funds are withdrawn. There is a penalty for early withdrawal, with some exceptions such as death or disability of the employee. I.R.C. § 401(k).

Four seas. The seas surrounding England. These were divided into the Western, including the Scotch and Irish; the Northern, or North sea; the Eastern, being the German ocean; the Southern, being the British channel.

Fourteenth Amendment. The Fourteenth Amendment of the Constitution of the United States, ratified in 1868, creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which results in either deprivation of life, liberty, or property without due process of law, or, in denial of the equal protection of the laws. This Amendment also contains provisions concerning the apportionment of representatives in Congress. *See also* Due process of law; Equal protection clause.

Fourth Amendment. Amendment of the U.S. Constitution guaranteeing people the right to be secure in their homes and property against unreasonable searches and seizures and providing that no warrants shall issue except upon probable cause and then only as to specific places to be searched and persons and things to be seized. *See* Probable cause; Search (and other cross-references thereunder).

Fourth estate. The journalistic profession (*i.e.* the press). Term has its source from a reference to the reporters' gallery of the British Parliament whose influence on public policy was said to equal that of Parliament's three traditional estates, the clergy, nobility, and commons.

Fox's Libel Act. In English law, this was the statute 52 Geo. III, c. 60, which secured to juries, upon the trial of indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment.

Foy /fóy/f(w)éy/fwá/. L. Fr. Faith; allegiance; fidelity.

F.P.A. In maritime insurance: "Free from particular average". *See* Average.

F.P.R. Federal Procurement Regulations. *See now* Federal Acquisition Regulations.

Fr. A Latin abbreviation for "fragmentum," a fragment, used in citations to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, the several extracts from juristic writings of which it is composed being so called.

Fractio /fráksh(iy)ow/. Lat. A breaking; division; fraction; a portion of a thing less than the whole.

Fraction. A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole.

Fractional. As applied to tracts of land, particularly townships, sections, quarter sections, and other divisions according to the government survey, and also mining claims, this term means that the exterior boundary lines are laid down to include the whole of such a division or such a claim, but that the tract in question does not measure up to the full extent or include the whole acreage, because a portion of it is cut off by an overlapping survey, a river or lake, or some other external interference. Any irregular division whether containing more or less than conventional amount of acreage.

Fractional share. Unit of stock less than a full share. This term comes into use with a stock dividend in an instance for example where an owner of 75 shares receives a 10% stock dividend. That part or portion of a share of stock indicated on a right or warrant as subject to purchase by the exercise of such right.

Fractional share formula. *See* Marital deduction.

Fractionem diei non recipit lex /frákshiyównəm dayiyay nón résepət léks/. The law does not take notice of a portion of a day.

Fraction of a day. A portion of a day. The dividing a day. Generally, the law does not allow the fraction of a day.

Fractitium /fræktish(iy)əm/. Arable land. Mon. Angl.

Fractura navium /fræktýurə néyv(i)yəm/. Lat. The breaking or wreck of ships; the same as *naufragium* (*q.v.*).

Fragmenta /frægméntə/. Lat. Fragments. A name sometimes applied (especially in citations) to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, as being made up of numerous extracts or "fragments" from the writings of various jurists.

Fragmented literal similarity. In copyright law, an infringement plaintiff can prove copying by the defendant by showing that scattered throughout the defendant's work are words (or musical phrases, or artistic symbols or images) that constitute part of the protected work.

Frais /fréy/. Fr. Expense; charges; costs. *Frais d'un procès*, costs of a suit.

Frais de justice /fréy də zhustiys/. In French and Canadian law, costs incurred incidentally to the action.

Frais jusqu'à bord /fréy jəskə bór(d)/. Fr. In French commercial law, expenses to the board; expenses incurred on a shipment of goods, in packing, cartage, commissions, etc., up to the point where they are actually put on board the vessel.

Framed. Incrimination of person on false or fabricated evidence. *Compare* Entrapment.

When used to describe evidence, word is generally accepted as implying that willful perjurers, suborned by and conspiring with parties in interest to litigation, are swearing or have sworn to matters without any basis in fact. *Tri-State Transit Co. of Louisiana v. Westbrook*, 207 Ark. 270, 180 S.W.2d 121, 125.

Frame-up. Conspiracy or plot, especially for evil purpose, as to incriminate person on false evidence. *See* Entrapment.

Franc aleu /frónk alyúw/. In French feudal law, an allod; a free inheritance; or an estate held free of any services except such as were due to the sovereign.

Franchilanus /fræŋkəlénəs/. A freeman. A free tenant.

Franchise. A special privilege to do certain things conferred by government on individual or corporation, and which does not belong to citizens generally of common right; *e.g.*, right granted to offer cable television service. *Artesian Water Co. v. State, Dept. of Highways and Transp., Del.Super.*, 330 A.2d 432, 439. In England it is defined to be a royal privilege in the hands of a subject.

A privilege granted or sold, such as to use a name or to sell products or services. The right given by a manufacturer or supplier to a retailer to use his products and name on terms and conditions mutually agreed upon.

In its simplest terms, a franchise is a license from owner of a trademark or trade name permitting another

to sell a product or service under that name or mark. More broadly stated, a "franchise" has evolved into an elaborate agreement under which the franchisee undertakes to conduct a business or sell a product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor undertakes to assist the franchisee through advertising, promotion and other advisory services. *H & R Block, Inc. v. Lovelace*, 208 Kan. 538, 493 P.2d 205, 211. Term also refers to such business as owned by franchisee. State and Federal laws regulate business franchising. *See also* Franchised dealer.

Corporate franchise. *See* that title. *See also* Charter.

Elective franchise. The right of suffrage; the right or privilege of voting in public elections. Such right is guaranteed by Fifteenth, Nineteenth, and Twenty-fourth Amendments to U.S. Constitution.

Exclusive franchise. *See* Exclusive agency.

General and special. The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but with private profit.

Sports franchise. As granted by a professional sports association, it is a privilege to field a team in a given geographic area under the auspices of the league that issues it. It is merely an incorporeal right.

Tax treatment. A franchise is an agreement which gives the transferee the right to distribute, sell, or provide goods, services, or facilities, within a specified area. The cost of obtaining a franchise may be amortized over the life of the agreement. In general, a franchise is a capital asset and results in capital gain or loss if all significant powers, rights or continuing interests are transferred pursuant to the sale of a franchise.

Franchise agreement. Generally, an agreement between a supplier of a product or service or an owner of a desired trademark or copyright (franchisor), and a reseller (franchisee) under which the franchisee agrees to sell the franchisor's product or service or to do business under the franchisor's name. State and federal laws regulate the content of franchise agreements.

Franchise appurtenant to land. Usually a franchise is not regarded as real property or land and is not included in the term "tenement;" but it is sometimes characterized or classified as real property or as property of the nature of real property when exercised in connection with real property, and is, in terms, classified as real property, real estate, or land by some statutes.

Franchise clause. Provision in casualty insurance policy to the effect that the insurer will pay those claims only over a stated amount and that the insured is responsible for all damage under the agreed amount. This clause differs from a deductible provision in that the insured bears the loss in every claim up to the deductible amount whereas, under the franchise clause, once the claim exceeds the agreed amount, the insurer pays the entire claim.

Franchised dealer. A retailer who sells the product or service of a manufacturer or supplier under a franchise agreement which generally protects the territory for the retailer and provides advertising and promotion support to him. *See* Franchise.

Franchisee. Person or company that is granted franchise by a franchisor.

Franchise tax. A tax upon the privilege of existing or the privilege of doing certain things. An annual tax on the privilege of doing business in a state; it is not a direct tax on income. *Hoosier Engineering Co. v. Shea*, 124 Vt. 341, 205 A.2d 821, 822. A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it. *City of Poplar Bluff v. Poplar Bluff Loan and Bldg. Ass'n*, Mo.App., 369 S.W.2d 764, 766.

Though the value of the franchise, for purposes of taxation, may be measured by the amount of business done, or the amount of earnings or dividends, or by the total value of the capital or stock of the corporation in excess of its tangible assets, a franchise tax is not a tax on either property, capital, stock, earnings, or dividends. *Greene v. Louisville & I. R. Co.*, 244 U.S. 499, 37 S.Ct. 673, 678, 61 L.Ed. 1280.

Franchisor. Person or company that grants a franchise to a franchisee.

Francia /fráns(h)(i)yə/. France.

Francigena /fránsəjɪnə/. A man born in France. A designation formerly given to aliens in England. *See* Frenchman.

Franc tenancier /frónk tenənsyéy/. In French law, a freeholder.

Francus /fráŋkəs/. L. Lat. Free; a freeman; a Frank.

Francus bancus /fráŋkəs báŋkəs/. Free-bench (*q.v.*).

Francus homo /fráŋkəs hówmow/. In old European law, a free man.

Francus plegius /fráŋkəs pléjɪyəs/. In old English law, a frank pledge, or free pledge. *See* Frank-pledge.

Francus tenens /fráŋkəs ténənz/. A freeholder. *See* Frank-tenement.

Frank, v. To send matter through the public mails free of postage, by a personal or official privilege. *See* Franking privilege.

Frank, adj. In old English law, free. Occurring in several compounds.

Frankalmoign /fráŋkəlmóyn/. In English law, free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors forever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is

free. Such type tenures were abolished by the Administration of Estates Act of 1925.

Frank bank. In old English law, free bench. *See* Free-bench.

Frank-chase. A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, etc., even in their own demesnes, to the prejudice of the owner of the liberty. *See* Chase.

Frank-fee. Freehold lands exempted from all services, but not from homage; lands held otherwise than in ancient demesne. That which a man holds to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor.

Frank ferm. In English law, a species of estate held in socage, said by Britton to be "lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof neither homage, ward, marriage, nor relief can be demanded." 2 Bl.Comm. 80.

Frank-fold. In old English law, free-fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seignory, in his fold, in his demesnes, to manure his land.

Franking privilege. The privilege of sending certain matter through the public mails without payment of postage, in pursuance of a personal or official privilege. The privilege granted to members of Congress to send out a certain amount of mail under signature without charge. *See* 39 U.S.C.A. § 3210 et seq.

Frank-law. An obsolete expression signifying the rights and privileges of a citizen, or the liberties and civic rights of a freeman.

Frankleyn /fráŋklən/. (Spelled, also, "Francling" and "Franklin".) A freeman; a freeholder; a gentleman.

Frank-marriage. In old English law, a species of entailed estates. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, *i.e.*, in special tail. The word "frank-marriage," *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be passed between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. 2 Bl.Comm. 115.

Frank-pledge. In old English law, a pledge or surety for freemen; that is, the pledge, or corporate responsibility, of all the inhabitants of a tithing for the general good behavior of each free-born citizen above the age of fourteen, and for his being forthcoming to answer any infraction of the law. A pledge of surety to the sovereign for the collective good conduct of a group.

Frank-tenant. A freeholder.

Frank-tenement. In English law, a free tenement, freeholding, or freehold. 2 Bl.Comm. 61, 62, 104. Used to denote both the tenure and the estate.

F.R.A.P. Federal Rules of Appellate Procedure.

Frater /fréytər/. In the civil law, a brother. *Frater consanguineus*, a brother having the same father, but born of a different mother. *Frater uterinus*, a brother born of the same mother, but by a different father. *Frater nutricius*, a bastard brother.

Frater fratri uterino non succedet in hæreditate paterna /fréytər frátray yúwtəráynow nòn sèksiydət in hæriydtéyiy pətérnə/. A brother shall not succeed a uterine brother in the paternal inheritance. 2 Bl. Comm. 223. A maxim of the common law of England, now superseded.

Frateria /frátír(i)yə/. In old records, a fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, etc., of their living brethren, and the souls of those that were dead.

Fraternal. Brotherly; relating or belonging to a fraternity or an association of persons formed for mutual aid and benefit, but not for profit. In re Mason Tire & Rubber Co., 56 App.D.C. 170, 11 F.2d 556, 557.

Fraternal benefit association or society. One whose members have adopted the same, or a very similar, calling, avocation, or profession, or who are working in unison to accomplish some worthy object, and who for that reason have joined themselves together as an association or society to aid and assist one another, and to promote the common cause. Alpha Rho Alumni Ass'n v. City of New Brunswick, 126 N.J.L. 233, 18 A.2d 68, 70. A society or voluntary association organized and carried on for the mutual aid and benefit of its members, not for profit; which ordinarily has a lodge system, a ritualistic form of work, and a representative government, makes provision for the payment of death benefits, and (sometimes) for benefits in case of accident, sickness, or old age, the funds therefor being derived from dues paid or assessments levied on the members.

Fraternal insurance. The form of life (or accident) insurance furnished by a fraternal beneficial association, consisting in the payment to a member, or his heirs in case of death, of a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

Fraternal lodge. See Fraternal benefit association or society.

Fraternia /frétórni(i)yə/. A fraternity or brotherhood.

Fraternity. A body of persons associated for their common interest, business or pleasure. In American colleges, a student organization, either a nationally chartered society comprising many affiliated chapters or a single chapter in one institution, formed chiefly to promote friendship and welfare among the members, and usually having secret rites and a name consisting of

Greek letters. Woman's Club of Little Falls v. Township of Little Falls, 20 N.J.Misc. 278, 26 A.2d 739, 741.

Fratres conjurati /frátriyyz kònjəréytay/. Sworn brothers or companions for the defense of their sovereign, or for other purposes.

Fratres pyes /frátriyyz páyz/. In old English law, certain friars who wore white and black garments.

Fratriage /frátriyyəj/. A younger brother's inheritance.

Fratricide /frátrəsáyd/. One who has killed a brother or sister; also the killing of a brother or sister.

Fraud. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture. Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super. 90, 464 A.2d 1243, 1251. A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

Elements of a cause of action for "fraud" include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. Citizens Standard Life Ins. Co. v. Gilley, Tex.Civ.App., 521 S.W.2d 354, 356.

As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other.

See also Actionable fraud; Badges of fraud; Cheat; Civil fraud; Collusion; Constructive fraud; Criminal (*Criminal fraud*); Deceit; False pretenses; False representation; Intrinsic fraud; Mail fraud; Material fact; Misrepresentation; Promissory fraud; Reliance; Scheme or artifice to defraud.

Actionable fraud. See Actionable fraud.

Actual or constructive fraud. Fraud is either *actual* or *constructive*. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another. It is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. Constructive fraud consists in any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or, in any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Extrinsic fraud. Fraud which is collateral to the issues tried in the case where the judgment is rendered. Type of deceit which may form basis for setting aside a judgment as for example a divorce granted ex parte because the plaintiff-spouse falsely tells the court he or she is ignorant of the whereabouts of the defendant-spouse. *Patrick v. Patrick*, 245 N.C. 195, 95 S.E.2d 585.

Fraud in fact or in law. Fraud is also classified as *fraud in fact* and *fraud in law*. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (*q.v.*). See also *Fraud in the factum*; *Legal or positive fraud*, below.

Fraud in the execution. Misrepresentation that deceives the other party as to the nature of a document evidencing the contract.

Fraud in the factum. Misrepresentation as to the nature of a writing that a person signs with neither knowledge nor reasonable opportunity to obtain knowledge of its character or essential terms. See U.C.C. § 3-305(2)(c). See also *Fraud in fact or in law*, above.

Fraud in the inducement. Fraud connected with underlying transaction and not with the nature of the contract or document signed. Misrepresentation as to the

terms, quality or other aspects of a contractual relation, venture or other transaction that leads a person to agree to enter into the transaction with a false impression or understanding of the risks, duties or obligations she has undertaken.

Intrinsic fraud. That which pertains to issue involved in original action or where acts constituting fraud were, or could have been, litigated therein. *Fahrenbruch v. People ex rel. Taber*, 169 Colo. 70, 453 P.2d 601. Perjury is an example of intrinsic fraud.

Larceny. See *Larceny (Larceny by fraud or deception)*.

Legal or positive fraud. Fraud is also said to be *legal* or *positive*. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. Positive fraud is the same thing as actual fraud. *Nocatee Fruit Co. v. Fosgate*, C.C.A.Fla., 12 F.2d 250, 252. See also *Legal fraud*.

Mail and wire fraud. Criminal offense of using mails or interstate wires to create or in furtherance of a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses. 18 U.S.C.A. §§ 1341, 1343.

Statute of frauds. See *Frauds, Statute of*.

Tax fraud. Federal offense of willfully attempting to evade or defeat the payment of taxes due and owing. I.R.C. § 7201. Tax fraud falls into two categories: civil and criminal. Under civil fraud, the IRS may impose as a penalty an amount equal to 75 percent of the underpayment. I.R.C. § 6653(b). Fines and/or imprisonment are prescribed for conviction of various types of criminal tax fraud. I.R.C. §§ 7201-7207. Both civil and criminal fraud require a specific intent on the part of the taxpayer to evade the tax; mere negligence is not enough. Criminal fraud requires the additional element of willfulness (*i.e.*, done deliberately and with evil purpose). In practice, it becomes difficult to distinguish between the degree of intent necessary to support criminal, rather than civil, fraud. In either situation, the IRS has the burden of proving fraud.

Fraudare /fròdèriy/. Lat. In the civil law, to deceive, cheat, or impose upon; to defraud.

Fraud on court. A scheme to interfere with judicial machinery performing task of impartial adjudication, as by preventing opposing party from fairly presenting his case or defense. Finding of fraud on the court is justified only by most egregious misconduct directed to the court itself such as bribery of a judge or jury to fabrication of evidence by counsel and must be supported by clear, unequivocal and convincing evidence. In re *Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, C.A.Minn., 538 F.2d 180, 195. It consists of conduct so egregious that it undermines the integrity of the judicial process. *Stone v. Stone*, Alaska, 647 P.2d 582, 586.

Frauds, Statute of. This is the common designation of a very celebrated English statute (29 Car. II, c. 3), passed in 1677, which has been adopted, in a more or less modified form, in nearly all of the United States. Its

chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent (*e.g.*, contracts for the sale of goods priced at \$500 or more; contracts for the sale of land; contracts which cannot, by their terms, be performed within a year; and contracts to guaranty the debt of another). Its object was to close the door to the numerous frauds and perjuries. It is more fully named as the "statute of frauds and perjuries."

Uniform Commercial Code. U.C.C. § 2-201 provides that a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.

Fraudulent. Based on fraud; proceeding from or characterized by fraud; tainted by fraud; done, made, or effected with a purpose or design to carry out a fraud. *See also* False and fraudulent; Fraud.

A statement, or claim, or document, is "fraudulent" if it was falsely made, or caused to be made, with the intent to deceive.

To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.

Fraudulent alienation. In a general sense, the transfer of property with an intent to defraud creditors, lienors, or others. In a particular sense, the act of an administrator who wastes the assets of the estate by giving them away or selling at a gross undervalue.

Fraudulent alienee /fródyələnt əyl(i)yəníy/. One who knowingly receives from an administrator assets of the estate under circumstances which make it a fraudulent alienation on the part of the administrator.

Fraudulent alteration. A change in the terms of an instrument, document or other paper made with a dishonest and deceitful purpose to acquire more than one was entitled to under the original terms of the paper. *See also* Alteration; Forgery; Raised check.

Fraudulent banking. Receipt of deposit by banker who knows that bank is insolvent at the time.

Fraudulent claims. *See* False claim.

Fraudulent concealment. The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. The employment of artifice planned to prevent inquiry or escape investigation and to mislead or hinder the acquisition of information disclosing a right of action; acts relied on must be of an affirmative character and fraudulent. *Fundunburks v. Michigan Mut. Liability Co.*, 63 Mich.App. 405, 234 N.W.2d 545, 547. The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of

the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment." Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; the concealment of a fact which one is bound to disclose being the equivalent of an indirect representation that such fact does not exist. *See* Material fact.

Fraudulent conversion. Receiving into possession money or property of another and fraudulently withholding, converting, or applying the same to or for one's own use and benefit, or to use and benefit of any person other than the one to whom the money or property belongs. *See* Conversion.

Fraudulent conveyance. A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach. *Dean v. Davis*, 242 U.S. 438, 37 S.Ct. 130, 61 L.Ed. 419. Conveyance made with intent to avoid some duty or debt due by or incumbent on person making transfer.

In bankruptcy law, refers to a gift or transfer of the bankrupt's property for little or no consideration at a time when the debtor is insolvent, or one which renders debtor's capital unreasonably small, or one made by debtor who believes that he will not be able to meet maturing obligations, or one made with actual intent to hinder, delay or defraud his creditors. Such fraudulent conveyances may be avoided by the trustee. *Bankruptcy Code* § 548.

For a conveyance to be a "fraudulent conveyance" under Uniform Fraudulent Conveyance Act, there must be actual intent to hinder, delay, or defraud creditors, or grantor must be insolvent or be rendered insolvent by conveyance, and conveyance must be made without fair consideration. *Georgia-Pacific Corp. v. Lumber Products Co.*, Okl., 590 P.2d 661, 665, 100 A.L.R.3d 1. Many states have enacted this Uniform Act.

Fraudulent intent. Such intent exists where one, either with a view of benefitting oneself or misleading another into a course of action, makes a representation which one knows to be false or which one does not believe to be true. *In re Orenduff*, D.C.Okl., 226 F.Supp. 312, 314. *See* Fraud; Fraudulent misrepresentation.

Fraudulent misrepresentation. A false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity. *Cormack v. American Underwriters Corp.*, 288 N.W.2d 634. As basis for civil action, establishment of representation, falsity, scienter, deception, and injury, are generally required. *See also* Deceit; Fraud; Material fact; Misrepresentation.

Fraudulent or dishonest act. One which involves bad faith, a breach of honesty, a want of integrity, or moral

turpitude. *Hartford Acc. & Indem. Co. v. Singer*, 185 Va. 620, 39 S.E.2d 505, 507, 508.

Fraudulent preferences. *See* Preference.

Fraudulent pretense. Crime which consists of a false pretense, obtaining property of value thereby, and an intent to cheat and defraud. *Com. v. Evans*, 190 Pa.Super. 179, 154 A.2d 57, 81. *E.g.*, credit purchases made without requisite intent or ability to pay.

Fraudulent sale. *See* Sale.

Fraudulent transfers. *See* Fraudulent conveyance.

Fraunc, fraunche, fraunke /frónk/. *See* Frank.

Fraunchise /frónchaz/fránchâyz/. L. Fr. A franchise.

Fraus /frós/. Lat. Fraud. More commonly called, in the civil law, "*dolus*," and "*dolus malus*" (*q.v.*). A distinction, however, was sometimes made between "*fraus*" and "*dolus*"; the former being held to be of the most extensive import.

Fraus dans locum contractui /frós dánz lówkəm kənráktyuway/. A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "*fraus dans locum contractui*"; *i.e.*, a fraud occasioning the contract, or giving place or occasion for the contract.

Fraus est celare fraudem /frós èst səlériy fródəm/. It is a fraud to conceal a fraud.

Fraus est odiosa et non præsumenda /frós èst ówdiyówsə èt nón priyz(y)áménda/. Fraud is odious, and not to be presumed.

Fraus et dolus nemini patrocinari debent /frós èt dówləs némənay pətrəsənériy débənt/. Fraud and deceit should defend or excuse no man.

Fraus et jus nunquam cohabitant /frós èt jəs nónkwəm kówhábədənt/. Fraud and justice never dwell together.

Fraus latet in generalibus /frós létət in jènərəylybəs/. Fraud lies hid in general expressions.

Fraus legis /frós liyjs/. Lat. In the civil law, fraud of law; fraud upon law. *See* In fraudem legis.

Fraus meretur fraudem /frós məriytər fródəm/. Fraud merits fraud.

Fray /fréy/. *See* Affray.

F.R.B. Federal Reserve Board.

F.R.C.P. Federal Rules of Civil Procedure.

F.R.D. Federal Rules Decisions.

Frectum /fréktəm/. In old English law, freight. *Quoad frectum navium suarum*, as to the freight of his vessels.

Freddie Mac. *See* Federal Home Loan Mortgage Corporation.

Frednite. In old English law, a liberty to hold courts and take up the fines for beating and wounding. To be free from fines.

Fredstole /friθstúwl/. Sanctuaries; seats of peace.

Fredum /frydəm/. A fine paid for obtaining pardon when the peace had been broken. A sum paid the magistrate for protection against the right of revenge.

Fredwit, or fredwite /friθwæt/. A liberty to hold courts and take up the fines for beating and wounding.

Free. Not subject to legal constraint of another.

Unconstrained; having power to follow the dictates of own will. Not subject to the dominion of another. Not compelled to involuntary servitude; used in this sense as opposed to "slave."

Not bound to service for a fixed term of years; in distinction to being bound as an apprentice. Enjoying full civic rights. Available to all citizens alike without charge; as a free school.

Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc.

Certain, and also consistent with an honorable degree in life; as free services, in the feudal law.

Confined to the person possessing, instead of being shared with others; as a free fishery.

Not engaged in a war as belligerent or ally; neutral, as in the maxim: "Free ships make free goods."

See also Freedom.

Free alms. The name of a species of tenure. *See* Frank almoign.

Free alongside ship (FAS). In price quotations, means that the price includes all costs of transportation and delivery of the goods alongside of the ship. *See* U.C.C. § 2-319(2-4).

Free and clear. The title to property is said to be "free and clear" when it is not incumbered by any liens; but it is said that an agreement to convey land "free and clear" is satisfied by a conveyance passing a good (*i.e.* marketable) title.

Free and equal. As used in a constitutional provision that election shall be free and equal, the word "free" means that every one entitled to vote should have a reasonable opportunity to do so, a reasonable manner of doing so, etc., and the word "equal" means that every vote cast should have its decisive effect in the selection or choice to be made at the election. The term means that the voter shall not be physically restrained in the exercise of his right of franchise, by either civil or military authority, and that every voter shall have the same right as every other voter. *Asher v. Arnett*, 280 Ky. 347, 132 S.W.2d 772, 775. It is the essence of free elections that the right of suffrage be untrammelled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience, and there can be no "free election" unless there is freedom of opinion. An election to be free must be without coercion of any description or any deterrent from the elector's exercise of his free will by means of any intimidation or influence whatever, although there is no violence or physical coercion.

Free-bench. In old English law, a widow's dower out of copyholds to which she was entitled by the custom of some manors. It was regarded as an excrescence growing out of the husband's interest, and was a continuance of his estate.

Free-bord. In old records, an allowance of land over and above a certain limit or boundary, as so much beyond or without a fence. The right of claiming that quantity.

Free chapel. In English ecclesiastical law, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege.

Free course. In admiralty law, a vessel having the wind from a favorable quarter is said to sail on a "free course," or said to be "going free" when she has a fair (following) wind and her yards braced in.

Freedman. In Roman law, one who was set free from a state of bondage; an emancipated slave. The word was used in the same sense in the United States, respecting negroes who were formerly slaves.

Freedom. The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life. *See* Liberty.

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

Freedom of association. Right to peaceably assemble as guaranteed by First Amendment of U.S. Constitution. *See* Association.

Freedom of choice. As used in context of freedom of choice to attend school of choice in unitary, integrated school system, devoid of any de jure segregation, means the maximum amount of freedom and clearly understood choice in bona fide unitary system where schools are not white schools or Negro schools, but just schools. *Hall v. St. Helena Parish School Bd.*, D.C.La., 268 F.Supp. 923, 926. With respect to punishment, loss of freedom of choice is a natural by-product of the detention process and should not be considered "punishment" in the constitutional sense. *Bell v. Wolfish*, 441 U.S. 520, 537, 99 S.Ct. 1861, 1873, 60 L.Ed.2d 447 (1979).

Freedom of contract. A basic right reserved to the people by the Constitution (Art. I, § 10) that a state cannot violate even under sanction of direct legislative act. *Springfield Fire & Marine Ins. Co. v. Holmes*, D.C.Mont., 32 F.Supp. 964, 987. *See also* Impairing the obligation of contract; Liberty (*Liberty of contract*).

Freedom of expression. Right guaranteed by First Amendment of U.S. Constitution; includes freedom of religion, speech, and press. *See also* Liberty.

Freedom of Information Act. The Freedom of Information Act (5 U.S.C.A. § 552) provides for making infor-

mation held by Federal agencies available to the public unless it comes within one of the specific categories of matters exempt from public disclosure. Virtually all agencies of the executive branch of the Federal Government have issued regulations to implement the Freedom of Information Act. These regulations inform the public where certain types of information may be readily obtained, how other information may be obtained on request, and what internal agency appeals are available if a member of the public is refused requested information. This Act is designed to prevent abuse of discretionary power of federal agencies by requiring them to make public certain information about their workings and work product.

Freedom of press. Right to publish and distribute one's thoughts and views without governmental restriction as guaranteed by First Amendment of U.S. Constitution. Such right includes freedom from prior restraint of publication. There is little difference between "freedom of speech" and "freedom of press." *Klahr v. Winterble*, 4 Ariz.App. 158, 418 P.2d 404, 415. *See* Censor; Censorship; Gag order; Liberty (*Liberty of the press*); Prior restraint.

Freedom of religion. Freedom to individually believe and to practice or exercise one's belief. In *re Elwell*, 55 Misc.2d 252, 284 N.Y.S.2d 924, 930. This First Amendment protection embraces the concept of freedom to believe and freedom to act, the first of which is absolute, but the second of which remains subject to regulation for protection of society. *Oney v. Oklahoma City, C.C.A. Okl.*, 120 F.2d 861, 865. Such freedom means not only that civil authorities may not intervene in affairs of church; it also prevents church from exercising its authority through state. *Eastern Conference of Original Free Will Baptists of N. C. v. Piner*, 267 N.C. 74, 147 S.E.2d 581, 583. *See also* Establishment clause; Free exercise clause; Liberty (*Religious liberty*).

Freedom of speech. Right guaranteed by First Amendment of U.S. Constitution to express one's thoughts and views without governmental restrictions. *See also* Fighting words doctrine; Liberty (*Liberty of speech*); Speech or debate clause.

Freedom of the city. In English law, this phrase signifies immunity from county jurisdiction, and the privilege of corporate taxation and self-government held under a charter from the crown. This freedom is enjoyed of right, subject to the provision of the charter, and is often conferred as an honor on princes and other distinguished individuals. The freedom of a city carries the parliamentary franchise. The rights and privileges possessed by the burgesses or freemen of a municipal corporation under the old English law; now of little importance, and conferred chiefly as a mark of honor.

The phrase has no place in American law, and as frequently used in addresses of welcome made to organizations visiting an American city, particularly by mayors, has no meaning whatever except as an expression of good will.

Free election. Exists where each voter is allowed to cast his ballot as his own conscience dictates. *See also* Free and equal.

Free enterprise. The right to conduct a legitimate business for profit, under usual laws of supply and demand, without undue government interference. *Lafayette Dramatic Productions v. Ferentz*, 9 N.W.2d 57, 62, 305 Mich. 193.

Free entry, egress, and regress. An expression used to denote that a person has the right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements.

Free exercise clause. First Amendment to U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *See also* Establishment clause; Freedom of religion; Liberty.

Free fishery. *See* Fishery.

Freehold. An estate for life or in fee. *Intermountain Realty Co. v. Allen*, 60 Idaho 228, 90 P.2d 704, 706. A "freehold estate" is a right of title to land. *Cohn v. Litwin*, 311 Ill.App. 55, 35 N.E.2d 410, 413. An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least (as distinguished from a leasehold); and held by a free tenure (as distinguished from copyhold or villeinage).

An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for, if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

Freehold *in deed* is the real possession of land or tenements in fee, fee-tail, or for life. Freehold *in law* is the right to such tenements before entry. The term has also been applied to those offices which a man holds in fee or for life.

Determinable freeholds are estates for life, which may determine upon future contingencies before the life for which they are created expires, as if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice. In these and similar cases, whenever the contingency happens,—when the widow marries, or when the grantee obtains the benefice,—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen. 2 Bl.Comm. 121.

Freehold *in law* is a freehold which has descended to a man, upon which he may enter at pleasure, but which he has not entered on.

Freeholder. One having title to realty; either of inheritance or for life; either legal or equitable title. A person who possesses a freeholder estate; *i.e.* the owner of a freehold.

Freehold land societies. Societies in England designed for the purpose of enabling mechanics, artisans, and other workmen to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated.

Free ice. All ice in navigable streams not included within that authorized to be appropriated is sometimes called "free" ice, and does not belong to the adjacent riparian owners, but to the person who first appropriates it. *Hudson River Ice Co. v. Brady*, 158 App.Div. 142, 142 N.Y.S. 819, 821.

Free law. A term formerly used in England to designate the freedom of civil rights enjoyed by freemen. It was liable to forfeiture on conviction of treason or an infamous crime.

Freeman. A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of "slave." In feudal law, it designated an allodial proprietor, as distinguished from a vassal or feudal tenant. (And so in Pennsylvania colonial law.) In old English law, the word described a freeholder or tenant by free services; one who was not a villein. The term later referred to a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic rights.

Freeman's roll. A list of persons admitted as burgesses or freemen for the purposes of the rights reserved by the municipal corporation act. Distinguished from the Burgess Roll. The term was used, in early colonial history, in some of the American colonies.

Free men. Before the Norman Conquest, a free man might be a man of small estate dependent on a lord. Every man, not himself a lord, was bound to have a lord or be treated as unworthy of a free man's right. Among free men there was a difference in their estimation for *Wergild*. *See* Homo liber.

Free on board (FOB). The term "F.O.B." is an abbreviation for "free on board" and means that seller will deliver subject matter contracted for, on certain conveyance, without expense to buyer. *Tyson v. Seaport Grain, Inc.*, Tex.Civ.App., 388 S.W.2d 731, 735. In sales price quotation, means generally that the seller assumes all responsibilities and costs up to the point of delivery, including insurance, transportation, etc. *See* U.C.C. § 2-319.

Free port. An area or section of a port set aside for handling of foreign goods without entering customs. *See also* Foreign trade zone.

Free press. *See* Freedom of press.

Free services. In feudal and old English law, such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like.

Free shareholders. The free shareholders of a building and loan association are subscribers to its capital stock who are not borrowers from the association.

Free ships. In international law, ships of a neutral nation. The phrase "free ships shall make free goods" is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships.

Free socage. See Socage.

Free tenure. Tenure by free services; freehold tenure.

Free time. Period that railroad car or vessel may remain unloaded before demurrage charges begin.

Free trade. A situation where all commodities can be freely imported and exported without special taxes or restrictions being levied.

Free trade zone. See Foreign trade zone.

Free warren. See Warren.

Freeze-out. Refers to a process, usually in a closely held corporation, by which minority shareholders are prevented from receiving any direct or indirect financial return from the corporation in an effort to persuade them to liquidate their investment in the corporation on terms favorable to the controlling shareholders. The use of corporate control vested in the statutory majority of shareholders or the board of directors to eliminate minority shareholders from the enterprise or to reduce to relevant insignificance their voting power or claims on corporate assets. It implies a purpose to force upon the minority shareholder a change which is not incident to any other business goal of the corporation. *Gabhart v. Gabhart, Ind.*, 370 N.E.2d 345, 353. See also Squeeze-out.

Freight. The price or compensation paid for the transportation of goods by a carrier. Name also applied to goods transported by such carriers. See also Freight rate.

Dead freight. Money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the ship-owner by the deficiency of cargo.

Freight booking. Making of specific arrangements for the transportation of goods in advance. See Forwarding agent; Freight forwarder.

Freighter. One who charters a ship to transport cargo; also, the vessel so chartered. The party by whom a vessel is engaged or chartered; otherwise called the "charterer." In French law, the owner of a vessel is called the "freighter" (*fréteur*); the merchant who hires it is called the "affreighter" (*affréteur*).

Freight forwarder. One who in the ordinary course of business assembles and consolidates small shipments into a single lot and assumes responsibility for transportation of such property from point of receipt to point of destination. *Mercury Motor Express, Inc. v. Brinke, C.A.Fla.*, 475 F.2d 1086, 1090. Freight forwarders collect and consolidate less than carload or less than truckload shipments and secure common carrier transporta-

tion for the long haul movement of property owned by individual shippers by carload or truckload. *National Motor Freight Traffic Ass'n v. U. S.*, D.C.D.C., 253 F.Supp. 661, 663.

Freight mile. The equivalent of one ton of goods (*i.e.* freight) carried one mile.

Freight rate. The transportation charge for goods carried based on number of pieces carried, or the weight, or the mileage, or the value of the goods, or a combination thereof.

Freight then pending. Earnings of the voyage. *The C. F. Coughlin, D.C.N.Y.*, 25 F.Supp. 649, 650.

Frenchman. In early times, in English law, this term was applied to every stranger or "outlandish" man.

French pool. A system of gambling, especially on horse races, now generally known as "pari mutuel" (*q.v.*).

Frendlesman /fréndlæsmən/. Sax. An outlaw. So called because of his outlawry he was denied all help of friends after certain days.

Frendwite /fréndwàyt/. In old English law, a mulct or fine exacted from him who harbored an outlawed friend.

Freneticus /frénédekəs/. In old English law, a madman, or person in a frenzy.

Freoborgh /fryrbörg/. A free-surety, or free-pledge. See Frank-pledge.

Freoling /fryrlinj/. (Sax. *freoh*, free, plus *ling*, progeny.) A freeman born. See Frilingi.

Frequent /frækwént/, *v.* To visit often; to resort to often or habitually.

Frequenter /frækwéntər/. Any person not an employee who may go in or be in place of employment or public building under circumstances which render him other than trespasser. An employee of an independent contractor working upon the premises of an owner is a "frequenter" working in a place of employment. *Young v. Anaconda Am. Brass Co.*, 43 Wis.2d 36, 168 N.W.2d 112, 117.

Frequentia actus multum operatur /frækwénsh(iy)ə áktas máltəm ópéréytər/. The frequency of an act effects much. A continual usage is of great effect to establish a right.

Frère /frér/. Fr. A brother. *Frère eyne*, elder brother. *Frère puisne*, younger brother.

Fresca /fréskə/. In old records, fresh water, or rain and land flood.

Fresh. Immediate; recent; following without any material interval.

Fresh complaint rule. The fresh complaint rule provides that in certain sexual assault cases proof that the alleged victim complained of the criminal act within a reasonable time after it occurred to a person she would ordinarily turn to for help or advice is admissible to bolster the credibility of the victim. *State v. Tirone*, 64 N.J. 222, 314 A.2d 601.

Fresh disseisin /frésh dəsiyzən/. By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh* (*flagrante disseisina*).

Freshet /fréshət/. A flood, or overflowing of a river, by means of rains or melted snow; an inundation.

Fresh fine. In old English law, a fine that had been levied within a year past.

Fresh pursuit. Refers to common-law right of police officer to cross jurisdictional lines in order to arrest a felon. *Carson v. Pape*, 15 Wis.2d 300, 112 N.W.2d 693, 697. Several states have adopted the Uniform Extra-Territorial Arrest on Fresh Pursuit Act. Basically, the law permits a police officer, of a state which has enacted the Act, to enter a state, which has enacted a similar Act, if he is in fresh pursuit and he can continue in fresh pursuit, of a person in order to arrest him on the ground that he had committed a felony in the state of the pursuing officer. The officer has the same powers of arrest and to hold in custody as the law enforcement officials of the state that he has entered.

Also refers to Fourth Amendment doctrine allowing warrantless searches and arrests where police pursue a fleeing suspect into a protected area.

One from whom property has been taken may use reasonable force to retake it if such force is used immediately after the taking. Sometimes referred to as hot pursuit.

Fresh start adjustment. For persons dying after 1976, normally the decedent's income tax basis in property will carry over to the estate of heirs. The "fresh start" adjustment, however, permits an addition to basis for the appreciation attributable to the period from the date the property was acquired by the decedent to December 31, 1976. The "fresh start" adjustment is only allowed for purposes of determining income tax gain on the later disposition of the property by the estate or heirs. I.R.C. § 1023.

Fresh suit. In old English law, immediate and unremitting pursuit of an escaping thief. "Such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension."

Fret. Fr. In French marine law, freight.

Fréter /freytéy/. Fr. In French marine law, to freight a ship; to let it.

Fréteur /freytyúr/. Fr. In French marine law, freighter. The owner of a ship, who lets it to the merchant.

Fretum, frectum /fré(k)təm/. In old English law, the freight of a ship; freight money.

Fretum /frytəm/. Lat. A strait.

Friars /fráyərz/. An order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Domini-

cans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend.

Friburgh /fríybòrg/. (Also, Frithborg, Frithborgh, Friborg, Froborg, and Freoburgh.) (Sax.) A kind of frank-pledge whereby the principal men were bound for themselves and servants.

Fribusculum /frébáskyləm/. In the civil law, a temporary separation between husband and wife, caused by a quarrel or estrangement, but not amounting to a divorce, because not accompanied with an intention to dissolve the marriage.

Fridborg, frithborg /friðbòrg/. Frank-pledge. Security for the peace.

Fridhburgus /friðbúrgəs/. In old English law, a kind of frank-pledge, by which the lords or principal men were made responsible for their dependents or servants.

Friend. One favorably disposed. *Ned v. Robinson*, 181 Okl. 507, 74 P.2d 1156. Varying in degree from greatest intimacy to acquaintance more or less casual. *United States Trust Co. of Newark v. Montclair Trust Co.*, 133 N.J.Eq. 579, 33 A.2d 901, 903. One that seeks society or welfare of another whom one holds in affection, respect or esteem or whose companionship and personality are pleasurable; acquaintance, intimate, or confidant. *Sioux Associates, Inc. v. Iowa Liquor Control Commission*, 257 Iowa 308, 132 N.W.2d 421, 426. *See also* Next friend.

Friendless man. In old English law, an outlaw; so called because he was denied all help of friends.

Friendly fire. Fire burning in place where it was intended to burn, although damages may result. *Progress Laundry & Cleaning Co. v. Reciprocal Exchange, Tex.* Civ.App., 109 S.W.2d 226, 227.

Friendly societies. In English law, associations supported by subscription, for the relief and maintenance of the members, or their wives, children, relatives, and nominees, in sickness, infancy, advanced age, widowhood, etc. The statutes regulating these societies were consolidated and amended by St. 38 & 39 Vict., c. 60.

Friendly suit. A suit brought by a creditor against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor, against himself, in order to compel the creditors to take an equal distribution of the assets. Also any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested. *See also* Amicable action; Declaratory judgment. *Compare* Adversary proceeding.

Friend of the court. *See* Amicus curiæ.

Frilingi /frólinjay/. Persons of free descent, or freemen born; the middle class of persons among the Saxons. *See* Freoling.

Fringe benefits. Side, non-wage benefits which accompany or are in addition to a person's employment such as paid insurance, recreational facilities, sick leave, profit-sharing plans, paid holidays and vacations, etc. Such

benefits are in addition to regular salary or wages and are a matter of bargaining in union contracts. *See also* Cafeteria plan; Pension plan; Perquisites.

Frisk. Contact of the outer clothing of a person to detect by the sense of touch whether a concealed weapon is being carried. *People v. Francis*, 1 Dept., 108 A.D.2d 322, 489 N.Y.S.2d 166. A pat-down search of a suspect by police, designed to discover weapons for purpose of insuring safety of officer and others nearby, and not to recover contraband or other evidence for use at subsequent trial. The scope of a frisk has been limited by the courts to be less than a full-scale search. In determining whether a police officer had a basis for initiating a frisk, there are two matters to be considered. One concerns whether the officer had a sufficient degree of suspicion that the party frisked was armed and dangerous, and the other whether the officer was rightfully in the presence of the party frisked so as to be endangered if that person was armed. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. *See also* Stop and frisk.

Frith. Sax. Peace, security, or protection. This word occurs in many compound terms used in Anglo-Saxon law.

Frithborg /friθbòrg/. Frank-pledge.

Frithbote /friθbòwt/. A satisfaction or fine, for a breach of the peace.

Frithbreach /friθbriych/. The breaking of the peace.

Frithgar /friθgàr/. The year of jubilee, or of meeting for peace and friendship.

Frithgilda /friθgildə/. Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace.

Frithman /friθmàn/. A member of a company or fraternity.

Frithsocne /friθsòwkən/. Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Also spelled "*frithsoken*."

Frithsplot /friθsplòt/. A spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

Frithstool /friθstùwl/. The stool of peace. A stool or chair placed in a church or cathedral, and which was the symbol and place of sanctuary to those who fled to it and reached it.

Frivolous. Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. *Liebowitz v. Aimexco Inc.*, Colo.App., 701 P.2d 140, 142. Frivolous pleadings may be amended to proper form, or ordered stricken, under federal and state Rules of Civil Procedure.

Frivolous action. Groundless lawsuit with little prospect of success; often brought to embarrass or annoy the defendant. *See* Failure to state cause of action.

Frivolous appeal. One in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed. *Brooks v. General Motors Assembly Division*, Mo.App., 527 S.W.2d 50, 53. In federal practice, if a court of appeals determines that an appeal is "frivolous," it may award damages and single or double costs to the appellee. Fed.R.App.P. 38.

From. As used as a function word, implies a starting point, whether it be of time, place, or condition; and meaning having a starting point of motion, noting the point of departure, origin, withdrawal, etc., as he traveled "from" New York to Chicago. *Silva v. MacAuley*, 135 Cal.App. 249, 26 P.2d 887. One meaning of "from" is "out of". Word "from" or "after" an event or day does not have an absolute and invariable meaning, but each should receive an inclusion or exclusion construction according to intention with which such word is used. *Acme Life Ins. Co. v. White*, Tex.Civ.App., 99 S.W.2d 1059, 1060. Words "from" and "to," used in contract, may be given meaning to which reason and sense entitles them, under circumstances of case. *Woodruff v. Adams*, 134 Cal.App. 490, 25 P.2d 529.

From one place to another. From premises owned by one person to premises owned by another person in some legal subdivision or from one legal subdivision to another.

From person. Includes taking from presence of person assaulted as well as taking of property in actual contact with person of one robbed.

From, through, or under. The term refers to origin or devolution of property, and unless some title to or interest therein has been derived by assignment or otherwise from party adverse to decedent's estate, statute barring testimony is inapplicable.

From time to time. Occasionally, at intervals, now and then. *See* From.

Front. Forepart, as opposed to the back or rear. Any side or face of a building is a front, although the word is more commonly used to denote the entrance side. In re *McInerney*, 47 Wyo. 258, 34 P.2d 35, 43. As applied to a bare lot, it is that side of lot towards which, in ordinary circumstances, house, when built, will most likely face, and very general usage of building houses with their main entrance toward shorter street line results in common understanding that this is side intended when front of lot is referred to.

Frontage. Linear distance of property along street, highway, river, or lake. Extent of front along road or street. *Tzeses v. Barbahenn*, 125 N.J.L. 643, 17 A.2d 539, 540. The line of property on a public street. *Jagendorf v. City of Memphis*, Tenn., 520 S.W.2d 333, 335. Space available for erection of buildings, and does not include cross streets or space occupied by sidewalk or any ornamental spaces in plat between sidewalks and

curb. The expense of local improvements made by municipal corporations (such as paving, curbing, and sewerage) is generally assessed on abutting property owners in proportion to the "frontage" of their lots on the street or highway, and an assessment so levied being called a "frontage assessment."

Front foot. Measurement used in assessing and apportioning cost of public improvements; e.g. curbs, sewers, sidewalks, streets. As respects assessment, synonymous with "abutting foot." See also Frontage.

Front-foot rule. One by which cost of improvement is to be apportioned among several properties in proportion to their frontage on improvement and without regard to benefits conferred.

Frontier. In international law, that portion of the territory of any country which lies close along the border line of another country, and so "fronts" or faces it. Border between two countries. The term means something more than the boundary line itself, and includes a tract or strip of country, of indefinite extent, contiguous to the line.

Fronting and abutting. Very often, "fronting" signifies abutting, adjoining, or bordering on, depending largely on the context. *Rombauer v. Compton Heights Christian Church*, 328 Mo. 1, 40 S.W.2d 545, 551. As used in statutes relating to assessment for improvements, property between which and the improvement there is no intervening land.

Front wages. Type of prospective compensation paid to a victim of job discrimination without harm to incumbent employees until the victim achieves the position that he would have attained but for the illegal and discriminatory act. See also Back pay award.

Frozen account. An account in which no activity is permitted until a court order is lifted.

Frozen assets. Those assets of a business which cannot be readily sold without injuring the capital structure of the business in contrast to liquid assets which are readily convertible into cash.

Frozen deposits. Bank deposits that cannot be withdrawn because, for example, the financial institution is bankrupt or insolvent. In general, taxpayers are not required to report interest on frozen deposits.

Fructuarius /fr̥akt̥yuw̥eriyəs/. Lat. In the civil law, one who had the usufruct of a thing; i.e., the use of the fruits, profits, or increase, as of land or animals. Bracton applies it to a lessee, fermor, or farmer of land, or one who held lands *ad firmam*, for a farm or term.

Fructus /fr̥aktəs/. Lat. In the civil law, fruit, fruits; produce; profit or increase; the organic productions of a thing. The right to the fruits of a thing belonging to another. The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent.

Fructus augent hæreditatem /fr̥aktəs ógənt hærd̥st̥éytəm/. The yearly increase goes to enhance the inheritance.

Fructus civiles /fr̥aktəs sívályz/. All revenues and recompenses which, though not *fruits*, properly speaking, are recognized as such by the law. The term includes such things as the rents and income of real property, interest on money loaned, and annuities.

Fructus fundi /fr̥aktəs fánday/. The fruits (produce or yield) of land.

Fructus industriales /fr̥aktəs ənd̥st̥riyályz/. Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. Emblements are so called in the common law. Annual crops obtained by yearly labor and cultivation. Term includes those plants which are sown annually and grown primarily by manual labor such as wheat, corn and vegetables. *Key v. Loder*, D.C.Mun.App., 182 A.2d 60, 61.

Fructus legis /fr̥aktəs líjəs/. The fruit of the law, i.e. execution.

Fructus naturales /fr̥aktəs n̥ətyr̥éyályz/. Those products which are produced by the powers of nature alone; as wool, metals, milk, the young of animals. Term includes any plant which has perennial roots, such as trees, shrubs and grasses. *Key v. Loder*, D.C.Mun.App., 182 A.2d 60, 61.

Fructus pecudum /fr̥aktəs pékyədəm/. The produce or increase of flocks or herds.

Fructus pendentes /fr̥aktəs pendéntiyz/. Hanging fruits; those not severed. The fruits united with the thing which produces them. These form a part of the principal thing.

Fructus pendentes pars fundi videntur /fr̥aktəs pendéntiyz párz fánday vədéntər/. Hanging fruits make part of the land.

Fructus perceptos villæ non esse constat /fr̥aktəs p̥ərs̥éptows víliy n̥on ésiy kónstət/. Gathered fruits do not make a part of the farm.

Fructus rei alienæ /fr̥aktəs r̥íyay əlíyiny/. The fruits of another's property; fruits taken from another's estate.

Fructus separati /fr̥aktəs s̥əp̥ərəytay/. Separate fruits; the fruits of a thing when they are separated from it.

Fructus stantes /fr̥aktəs stántiyz/. Standing fruits; those not yet severed from the stalk or stem.

Fruges /fr̥újydz/. In the civil law, anything produced from vines, underwood, chalk-pits, stone-quarries.

Grains and leguminous vegetables. In a more restricted sense, any esculent growing in pods.

Fruit. The produce of a tree or plant which contains the seed or is used for food. The edible reproductive body of a seed plant. The effect or consequence of an act or operation.

Civil fruits. In the civil law (*fructus civiles*) are such things as the rents and income of real property, the

interest on money loaned, and annuities. Rents and revenues of an immovable.

Fruit fallen. In old English law, the produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson.

Natural fruits. In the civil law, the produce of the soil, or of fruit-trees, bushes, vines, etc., which are edible or otherwise useful or serve for the reproduction of their species. The term is used in contradistinction to "artificial fruits," i.e., such as by metaphor or analogy are likened to the fruits of the earth. Of the latter, interest on money is an example.

Fruit and the tree doctrine. The courts have held that an individual who earns income from his property or services cannot assign that income to another to avoid taxation. For example, a father cannot assign his earnings from commissions to his son and escape income tax on such amount.

Fruit of poisonous tree doctrine. Evidence which is spawned by or directly derived from an illegal search or illegal interrogation is generally inadmissible against the defendant because of its original taint, though knowledge of facts gained independently of the original and tainted search is admissible. *Wong Sun v. U. S.*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441. This doctrine is to the effect that an unlawful search taints not only evidence obtained at the search, but facts discovered by process initiated by the unlawful search. This doctrine is generally applied to cases involving searches in violation of the Fourth Amendment to the Constitution right against unlawful searches and seizures, but it can be applied to searches in violation of a statutory right. *Duncan v. State*, 278 Ala. 145, 176 So.2d 840, 865. See Exclusionary rule.

Fruits of crime. In the law of evidence, material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject-matter of the crime. See also Fruit of poisonous tree doctrine.

Frumenta quæ sata sunt solo cedere intelliguntur /fréméntə kwíy séytə sànt sówlow siydəriy intèlègántər/. Grain which is sown is understood to form a part of the soil.

Fruantum /fréméntəm/. In the civil law, grain. That which grows in an ear.

Frumgyld /frámgild/. Sax. The first payment made to the kindred of a slain person in recompense for his murder.

Frumstoll /frámstòl/. Sax. In Saxon law, a chief seat, or mansion house.

Frusca terra /fráskə téhrə/. In old records, uncultivated and desert ground.

Frustrura /frëshúrá/. A breaking; plowing.

Frustra /frástrə/. Lat. Without effect, in vain, to no purpose, uselessly; without reason or cause, groundlessly; in error.

Frustra agit qui judicium prosequi nequit cum effectu /frástə éyjàt kwáy jədish(iy)əm prósəkway nékwət kəm əféktyuw/. He sues to no purpose who cannot prosecute his judgment with effect [who cannot have the fruits of his judgment].

Frustra [vana] est potentia quæ nunquam venit in actum /frástrə èst pótenshiyə kwíy nàhkəwəm vínət in áktəm/véynə°. That power is to no purpose which never comes into act, or which is never exercised.

Frustra expectatur eventus cujus effectus nullus sequitur /frástrə èkspektéytər əvéntəs kyúwjàs əféktəs nàləs sékwətər/. An event is vainly expected from which no effect follows.

Frustra feruntur leges nisi subditis et obedientibus /frástrə fərántər líyjiyz náysay sébdətəs èt əbiydiyéntəbəs/. Laws are made to no purpose, except for those that are subject and obedient.

Frustra fit per plura, quod fieri potest per pauciora /frástrə fít pər pl(y)úra, kwòd fáyaray pówtəst pər pòsiyóra/. That is done to no purpose by many things which can be done by fewer. The employment of more means or instruments for effecting a thing than are necessary is to no purpose.

Frustra legis auxilium invocat [quærit] qui in legem committit /frástrə líyjàs ogzíl(iy)əm invówkət kwáy ən líyjàm kəmitat/°kwírst°. He vainly invokes the aid of the law who transgresses the law.

Frustra petis quod mox es restitutus /frástrə pétəs kwòd móks ès rəstət(y)úras/. In vain you ask that which you will have immediately to restore.

Frustra petis quod statim alteri reddere cogeris /frástrə pétəs kwòd stédəm óltəray rédəríy kójarəs/. You ask in vain that which you might immediately be compelled to restore to another.

Frustra probatur quod probatum non relevat /frástrə prəbéytər kwòd prəbéytəm nòn rélvət/. That is proved to no purpose which, when proved, does not help.

Frustration of contract. This doctrine provides, generally, that where existence of a specific thing is, either by terms of contract or in contemplation of parties, necessary for performance of a promise in the contract, duty to perform promise is discharged if thing is no longer in existence at time for performance. *Glidden Co. v. Hellenic Lines, Limited*, C.A.N.Y., 275 F.2d 253, 255. See U.C.C. § 2-615. See also Commercial impracticability; Impossibility.

Frustration of purpose doctrine. A court-created doctrine under which a party to a contract will be relieved of his or her duty to perform when the objective purpose for performance no longer exists (due to reasons beyond that party's control). This doctrine excuses a promisor in certain situations when the objectives of contract have been utterly defeated by circumstances arising after formation of agreement, and performance is ex-

cused under this rule even though there is no impediment to actual performance. *Hess v. Dumouchel Paper Co.*, 154 Conn. 343, 225 A.2d 797, 801.

Frustrum terræ /frástrəm téhriy/. A piece or parcel of land lying by itself.

Frymith /fráymíθ/. In old English law, the affording harbor and entertainment to any one.

Frythe. Sax. In old English law, a plain between woods. An arm of the sea, or a strait between two lands.

F.Supp. Federal Supplement. A unit of the National Reporter System covering cases decided in the U.S. district courts and U.S. Court of International Trade. See Federal Supplement.

F.T.C. Federal Trade Commission.

Fuage, fouage, or feuage /fyúwəj/. Hearth money. A tax laid upon each fireplace or hearth. An imposition of a shilling for every hearth, levied by Edward III in the dukedom of Aquitaine. 1 Bl.Comm. 324.

Fuer /fyúwər/. In old English law, flight. It was of two kinds: (1) *Fuer in fait*, or *in facto*, where a person did apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when, being called in the county court, he did not appear, which legal interpretation makes flight.

Fuero /fwérow/. In Spanish law, a law; a code.

A general usage or custom of a province, having the force of law. *Ir contra fuero*, to violate a received custom.

A grant of privileges and immunities. *Conceder fueros*, to grant exemptions.

A charter granted to a city or town. Also designated as "*cartas pueblas*."

An act of donation made to an individual, a church, or convent, on certain conditions.

A declaration of a magistrate, in relation to taxation, fines, etc.

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, etc.

A place where justice is administered. A peculiar *forum*, before which a party is amenable.

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico*, *fuero militar*.

Fuero de castilla /fwérow ðè kastíy(ly)ə/. The body of laws and customs which formerly governed the Castilians.

Fuero de correos y caminos /fwérow ðè koréyows iy kamíynows/. A special tribunal taking cognizance of all matters relating to the post office and roads.

Fuero de guerra /fwérow ðè géra/. A special tribunal taking cognizance of all matters in relation to persons serving in the army.

Fuero de marina /fwérow ðè mariyna/. A special tribunal taking cognizance of all matters relating to the navy and to the persons employed therein.

Fuero municipal /fwérow muwnniysíypál/. The body of laws granted to a city or town for its government and the administration of justice.

Fuero viejo /fwérow v(i)yéyhow/. The title of a compilation of Spanish law, published about A.D. 992.

Fugacia /fyəgéysh(iy)ə/. A chase.

Fugam fecit /fyúwgəm fiysət/. Lat. He has made flight; he fled. A clause inserted in an inquisition, in old English law, meaning that a person indicted for treason or felony had fled. The effect of this was to make the party forfeit his goods absolutely, and the profits of his lands until he had been pardoned or acquitted.

Fugator /fyəgéytər/. In old English law, a privilege to hunt.

A driver. *Fugatores carrucarum*, drivers of wagons.

Fugitation /fyúwjtéyshən/. When a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.

Fugitive. One who flees; used in criminal law with the implication of a flight, evasion, or escape from arrest, prosecution, or imprisonment. See Extradition; Fugitive from justice; Rendition.

Fugitive Felon Act. A federal statute which makes it a felony to flee across the state line for the purpose of avoiding prosecution or confinement for a state felony or attempted felony, or to avoid giving testimony in a state felony case. 18 U.S.C.A. § 1073. See Extradition.

Fugitive from justice. A person who, having committed a crime, flees from jurisdiction of court where crime was committed or departs from his usual place of abode and conceals himself within the district. A person who, having committed or been charged with crime in one state, has left its jurisdiction and is found within territory of another state when it is sought to subject him to criminal process of former state. *King v. Noe*, 244 S.C. 344, 137 S.E.2d 102, 103. See 18 U.S.C.A. §§ 1073, 1074. See also Extradition; Harbor; Rendition.

Fugitive's goods. Under the old English law, where a man fled for felony, and escaped, his own goods were not forfeited as *bona fugitivorum* until it was found by proceedings of record (e.g. before the coroner in the case of death) that he fled for the felony.

Fugitive slave law. Acts of Congress passed in 1793 and 1850 (prior to abolition of slavery) providing for the surrender and deportation of slaves who escaped from their masters and fled into the territory of another state, generally a "free" state.

Fugitivus /fyúwjtéyvvəs/. In the civil law, a fugitive; a runaway slave.

Fugue /fyúwg/. Period of memory loss during which subject functions almost as if normal, but concerning

which he has no subsequent recollection. *See* Automatism.

Full. Abundantly provided, sufficient in quantity or degree, complete, entire, and detailed. Having no open space. Ample, perfect, mature, not wanting in any essential quality.

Full age. The age of legal majority; legal age.

Full answer. In pleading, a complete and meritorious answer, not wanting in any essential requisite. *Frizell v. Northern Trust Co. of Chicago, Ill.*, 144 Kan. 481, 61 P.2d 1344, 1345, 1346.

Full blood. Relations of the "full blood," "whole blood," or "entire blood" are those derived not only from the same ancestor, but from the same couple of ancestors.

Full cash value. For property tax purposes, that which is synonymous with market value; that estimate of value which is derived annually by the use of standard appraisal methods and techniques. *Caldwell v. Department of Revenue, App.*, 122 Ariz. 45, 596 P.2d 45, 47. *See* Fair market value.

Full copy. In equity practice, a complete and unabbreviated transcript of a bill or other pleading, with all indorsements, and including a copy of all exhibits.

Full court. In practice, a court *en banc*. A court duly organized with all the judges present. Court containing permissible complement of judges, as distinguished from a lesser quorum or panel. *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 314 U.S. 326, 62 S.Ct. 272, 277, 86 L.Ed. 249. *See* En banc.

Full cousin. Son or daughter of one's uncle or aunt.

Full covenants. *See* Covenant.

Full coverage. Type of insurance protection which covers all losses with no deductible amount and which covers to the full amount.

Full crew laws. Laws which regulate the number of railroad employees who are required to man trains.

Full defense. In common law pleading, the formula of defense in a plea, stated at length and without abbreviation, thus: "And the said C.D., by E.F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," etc. Such technical pleading is no longer required under federal or state Rules of Civil Procedure.

Full disclosure. Term used in variety of legal contexts, e.g. a fiduciary who participates in a transaction for his own benefit is required to fully reveal the details of such. In consumer law, the obligation to reveal all details of a transaction to the consumer; e.g. federal and state Truth-in-Lending Acts. Also, federal election laws require candidates to make full disclosure of the extent and source of their campaign contributions. *See also* Compulsory disclosure; Disclosure.

Full faith and credit clause. The clause of the U.S. Constitution (Art. IV, Sec. 1) which provides that the various states must recognize legislative acts, public

records, and judicial decisions of the other states within the United States. There are exceptions to this, a major one being that a state need not recognize a divorce decree of a state where neither spouse was a legal resident. Doctrine means that a state must accord the judgment of a court of another state the same credit that it is entitled to in the courts of that state. *Morphet v. Morphet*, 263 Or. 311, 502 P.2d 255, 260. A judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in other states as it has by law or usage in the state from whence taken. *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610. *See also* Comity; Fautleroy doctrine.

Full hearing. Embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party, and to meet them. *Morgan v. U. S.*, 304 U.S. 1, 58 S.Ct. 773, 776, 777, 82 L.Ed. 1129. One in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and law of the step asked to be taken. *Akron, C. & Y. Ry. Co. v. U. S.*, 261 U.S. 184, 43 S.Ct. 270, 67 L.Ed. 605.

Full indorsement. *See* Indorsement.

Full jurisdiction. Complete jurisdiction over a given subject-matter or class of actions without any exceptions or reservations. *See* Jurisdiction.

Full life. Life in fact and in law. *See* In full life.

Full name. The first, middle and surname of a person, or the first name, middle initial and surname. May also refer to name under which a person is known in the community.

Full-paid stock. Stock on which no further payments can be demanded by the issuing company.

Full powers. A document issued by the government of a nation empowering its diplomatic agent to conduct special business with a foreign government.

Full proof. In the civil law, proof by two witnesses, or a public instrument. Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt. *See* Prima facie; Proof.

Full right. The union of a good title with actual possession.

Full settlement. Implies an adjustment of all pending matters, the mutual release of all prior obligations existing between the parties. *Hickox v. Hickox, Tex.Civ. App.*, 151 S.W.2d 913, 918.

Full value. *See* Fair market value.

Fully administered. The English equivalent of the Latin phrase "*plene administravit*"; being a plea by an executor or administrator that he has completely and legally disposed of all the assets of the estate, and has nothing left out of which a new claim could be satisfied.

Fumage /fyúmaj/. In old English law, the same as *fuage*, or smoke farthings. 1 Bl.Comm. 324. *See* *Fuage*.

Function. Derived from Latin "functus," the past participle of the verb "fungor" which means to perform, execute, administer. The nature and proper action of anything; activity appropriate to any business or profession. *Rosenblum v. Anglim*, D.C.Cal., 43 F.Supp. 889, 892. Office; duty; fulfillment of a definite end or set of ends by the correct adjustment of means. The occupation of an office. By the performance of its duties, the officer is said to fill his function. The proper activities or duties of municipality. *Bean v. City of Knoxville*, 180 Tenn. 448, 175 S.W.2d 954, 955.

Functional depreciation. Such results from necessary replacement of equipment before it is worn out, by reason of invention and improved machinery, equipment, etc. which render more efficient and satisfactory service. *See* *Functional obsolescence*.

Functional discount. Such as occurs where a supplier charges different prices to purchasers at different functional levels of distribution and where the higher price is charged to the purchaser at the level farther from the supplier in the chain of distribution, *i.e.*, the retailer is charged more than the wholesaler. Such is permissible under the Robinson-Patman Act. *FLM Collision Parts, Inc. v. Ford Motor Co.*, D.C.N.Y., 406 F.Supp. 224, 234.

Functional disease. One which prevents, obstructs, or interferes with the due performance of its special functions by any organ of the body, without anatomical defect or abnormality in the organ itself. Distinguished from "organic" disease, which is due to some injury to, or lesion or malformation in, the organ in question.

Functionality. Under trademark law, doctrine allowing protection to a shape, configuration or color scheme only if it is non-functional. Functionality exists if the design or color is so superior to available alternatives that competition would be hindered by giving the first user exclusive rights.

Functional obsolescence. The need for replacement because a structure or equipment has become inefficient or out-moded because of improvements developed since its original construction or production. The loss of value due to inherent deficiencies within the property. *Fisher-New Center Co. v. Michigan State Tax Commission*, 380 Mich. 340, 157 N.W.2d 271, 279.

With respect to valuation of property for taxation, is loss of value brought about by the failure or inability to deliver full service, and includes any loss of value by reason of shortcomings or undesirable features contained within the property itself and is a loss of utility and failure to function due to inadequacies of design and deficiencies in the property. *Piazza v. Town Assessor of Town of Porter*, 16 A.D.2d 863, 228 N.Y.S.2d 397, 398.

Functionary. A public officer or employee. An officer of a private corporation is also sometimes so called.

Functus officio /fŏŋktəs əfɪʃ(i)ow/. Lat. A task performed. *Board of School Trustees of Washington City Administrative Unit v. Benner*, 222 N.C. 566, 24 S.E.2d

259, 263. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect. *Holmes v. Birmingham Transit Co.*, 270 Ala. 215, 116 So.2d 912, 919.

Fund or funds. To capitalize with a view to the production of interest. Also, to put into the form of bonds, stocks, or other securities, bearing regular interest, and to provide or appropriate a fund or permanent revenue for the payment thereof. An asset or group of assets set aside for a specific purpose. To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal.

A generic term and all-embracing as compared with term "money," etc., which is specific. A sum of money or other liquid assets set apart for a specific purpose, or available for the payment of general debts, claims, or expenses.

In the plural, this word has a variety of slightly different meanings, as follows: moneys and much more, such as notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind. *State v. Finney*, 141 Kan. 12, 40 P.2d 411, 421. Money in hand, assets, cash, money available for the payment of a debt, legacy, etc. Corporate stocks or government securities; in this sense usually spoken of as the "funds." Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts. Generally, working capital; sometimes used to refer to cash or to cash and marketable securities.

See also Contingent fund; Current funds; Funded; Funding; General fund; Mutual fund; Revolving fund.

Funded debt. As applied to states or municipal corporations, a funded debt is one for the payment of which (interest and principal) some fund is appropriated, either specifically, or by provision made for future taxation and the *quasi* pledging in advance of the public revenue. As applied to the financial management of corporations (and sometimes of estates in course of administration or properties under receivership) funding means the borrowing of a sufficient sum of money to discharge a variety of floating or unsecured debts, or debts evidenced by notes or secured by bonds but maturing within a short time, and creating a new debt in lieu thereof, secured by a general mortgage, a series of bonds, or an issue of stock, generally maturing at a more remote period, and often at a lower rate of interest. The new debt thus substituted for the pre-existing debts is called the "funded debt." This term is very seldom applied to the debts of a private individual; but when so used it must be understood as referring to a debt embodied in securities of a permanent character and to the payment of which certain property has been applied or pledged. *See also* Funded.

Fund in court. As used in the rule providing for allowance of costs out of a "fund in court," this is a term of art and is applied where the plaintiffs' actions have created, preserved or increased property to the benefit of a class of which the plaintiff is not a member. *Sarner v. Sarner*, 38 N.J. 463, 185 A.2d 851, 853.

Funding system. The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. *See Sinking fund, below.*

General fund. This phrase, in many states, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. Such are distinguished from assets of a special character, such as the school fund. *See also* General fund.

General revenue fund. As used in connection with municipal finances, term refers to the fund out of which the usual, ordinary, running, and incidental expenses of a municipality are paid.

No funds. This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

Public funds. An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. The term applies to funds of every political subdivision of state wherein taxes are levied for public purposes. *Ætna Casualty & Surety Co. v. Bramwell*, D.C.Or., 12 F.2d 307, 309.

Revolving fund. Usually, a renewable credit over a defined period. In simple parlance it relates usually to a situation where a banker or merchant extends credit for a certain amount which can be paid off from time to time and then credit is again given not to exceed the same amount. It may also mean a fund, which, when reduced, is replenished by new funds from specified sources. Term may refer to a revolving charge account.

Sinking fund. The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. A fund created for extinguishing or paying a funded debt.

Sinking fund tax. A tax raised to be applied to the payment of interest on, and principal of public loan.

Fundamental error. *See* Error; Plain error rule.

Fundamental fairness doctrine. Due process of law as applied to judicial procedure. *See* Due process of law.

Fundamental law. The law which determines the constitution of government in a nation or state, and prescribes and regulates the manner of its exercise. The organic law of a nation or state; its constitution.

Fundamental rights. Those rights which have their source, and are explicitly or implicitly guaranteed, in the federal Constitution, *Price v. Cohen*, C.A.Pa., 715 F.2d 87, 93, and state constitutions, *Sidle v. Majors*, 264 Ind. 206, 341 N.E.2d 763. *See e.g.*, Bill of rights.

Challenged legislation that significantly burdens a "fundamental right" (examples include First Amendment rights, (privacy, and the right to travel interstate) will be reviewed under a stricter standard of review. A law will be held violative of the due process clause if it is not closely tailored to promote a compelling or overriding interest of government. A similar principle applies under Equal Protection law.

Fundamus /fəndəyməs/. We found. One of the words by which a corporation may be created in England. 1 Bl.Comm. 473.

Fundatio /fəndéysh(iy)ow/. Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations. As applied to eleemosynary corporations such as colleges and hospitals, it is said that "*fundatio incipiens*" is the incorporation or grant of corporate powers, while "*fundatio perficiens*" is the endowment or grant or gift of funds or revenues. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629. *See also* Foundation.

Fundator /fəndéytər/. A founder (*q.v.*).

Funded. Said of a pension plan or other obligation when funds have been set aside for meeting the obligation when it becomes due. *See also* Fund (*Funded debt*).

Funded pension plan. One containing sufficient funds as contributed by a corporation to meet current and future retirement benefit obligations. The Employee Retirement Income Security Act (ERISA) regulates funding of pension plans.

Funding. Process of financing capital expenditures by issuing long term debt obligations or by converting short term obligations into long term obligations to finance current expenses. Allocation of money to investments or other type of reserve fund to meet future expenses for pension, welfare, or other benefits. ERISA specifies the requirements for funding of qualified retirement plans. *See also* Fund; Funded.

Fundi patrimoniales /fənday pətrəmōniyéilyz/. Lands of inheritance.

Fundi publici /fənday pəbləsay/. Public lands.

Fundus /fəndəs/. In the civil and old English law, land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

Funeral expenses. Money expended in procuring the interment, cremation, or other disposition of a corpse, including suitable monument, perpetual care of burial lot and entertainment of those participating in wake.

Fungibiles res /fʌŋjɪbəlɪz rɪz/. Lat. In the civil law, fungibile things.

Fungibles. Goods which are identical with others of the same nature, such as grain and oil. *Mississippi State Tax Commission v. Columbia Gulf Transmission Co.*, 249 Miss. 88, 161 So.2d 173, 178. With respect to goods or securities, those of which any unit is, by nature or usage of trade, the equivalent of any other like unit, U.C.C. § 1-201(17); § 8-107(1); e.g., a bushel of wheat or other grain; common shares of the same company.

A product which has no important characteristics that identify it as coming from a particular supplier.

Movable goods which may be estimated and replaced according to weight, measure, and number. Things belonging to a class, which do not have to be dealt with *in specie*.

Where a thing which is the subject of an obligation (which one man is bound to deliver to another) must be delivered *in specie*, the thing is not fungible; that very individual thing, and not another thing of the same or another class, in lieu of it, must be delivered. Where the subject of the obligation is a thing of a given class, the thing is said to be fungible; i.e., the delivery of any object which answers to the generic description will satisfy the terms of the obligation.

Fur /fʌr/. Lat. A thief. One who stole secretly or without force or weapons, as opposed to robber.

Furandi animus /fʏərəndəɪ ʌnəmʌs/. Lat. An intention of stealing.

Furca /fʌrkə/. In old English law, a fork. A gallows or gibbet.

Furca et flagellum /fʌrkə ɛt flæjələm/. Gallows and whip. *Tenure ad furcam et flagellum*, tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb.

Furca et fossa /fʌrkə ɛt fɔsə/. Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves, viz., men by hanging, women by drowning.

Furian law /fʏəriyən lɔ/. See *Lex Furia Caninia*.

Furigeldum /fʏurəjeldəm/. A fine or mulct paid for theft.

Furiosi nulla voluntas est /fʏəriyɔwsay nʌlə vɔləntəs ɛst/. A madman has no will.

Furlingus /fʌrlɪŋgəs/. A furlong, or a furrow one-eighth part of a mile long.

Furlong. A measure of length, being forty poles, or one-eighth of a mile.

Furlough /fʌrlɔw/. A leave of absence; e.g. a temporary leave of absence to one in the armed service of the

country; an employee placed in a temporary status without duties and pay because of lack of work or funds or for other non-disciplinary reasons. 5 U.S.C.A. § 7511(a)(5). Also the document granting leave of absence.

Fur manifestus /fʌr mænɪfɛstəs/. In the civil law, a manifest thief. A thief who is taken in the very act of stealing.

Furnage. See *Fornagium*; *Four*.

Furnish. To supply, provide, or equip, for accomplishment of a particular purpose. As used in the liquor laws, "furnish" means to provide in any way, and includes giving as well as selling. As used in the Controlled Substances Act, means to provide or supply and connotes a transfer of possession. *Walker v. State, Ala.Cr.App.*, 428 So.2d 139, 141.

Furniture. This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, place of business, or public building or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for house-keeping; whatever is added to the interior of a house or apartment, for use or convenience.

Furor brevis /fʏurər brɪvəs/. A sudden transport of passion.

Furor contrahi matrimonium non sinit, quia consensu opus est /fʏurər kəntrɛyhay mætɹəmɔwn(i)yəm nɔn sɪnət, kwáyə kənsɛnshuw ɔwpəs ɛst/. Insanity prevents marriage from being contracted, because consent is needed. 1 Bl.Comm. 439.

Furst and fondung. In old English law, time to advise or take counsel.

Furta /fʌrtə/. A right derived from the king as supreme lord of a state to try, condemn, and execute *thieves* and felons within certain bounds or districts of an honour, manor, etc.

Further. Not a word of strict legal or technical import, and may be used to introduce negation or qualification of some precedent matter, but generally when used as an adverb it is word of comparison, and means "additional," and is equivalent to "moreover, or furthermore, something beyond what has been said or likewise, or also." Wider, or fuller, or something new. Occasionally it may mean any, future, or other.

Further advance. A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. See also *Future advance clause*; *Future advances*.

Furtherance. Act of furthering, helping forward, promotion, advancement, or progress. *Maryland Casualty Co. v. Smith, Tex.Civ.App.*, 40 S.W.2d 913, 914.

Further assurance, covenant for. See *Covenant*.

Further hearing, or further proceedings. Hearing at another time; additional hearing; new trial; or other proceedings directed by appellate court. Not a new proceeding but rather a continuation of an existing proceeding.

Further instructions. Additional instructions given to jury after they have once been instructed and have retired. Such may be requested by jury during course of deliberations when, for example, the jury is uncertain as to the applicable law.

Further maintenance of action, plea to. A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. Such plea is obsolete under federal and state Rules of Civil Procedure.

Furtive /fártəv/. Stealthily; by secret or stealth.

Furtum /fártəm/. Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. The thing which has been stolen.

Furtum conceptum /fártəm kənséptəm/. In Roman law, the theft which was disclosed where, upon searching any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat /fárdəm èst kòntrektéysh(iy)ow ríyay æliyiyniy fròdyuwléntə, kəm ænəməw f(y)ərænday, ənváytow ílow dómənow kyúwəjs ríyz ílə fyúwərət/. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

Furtum manifestum /fártəm mənəféstəm/. Open theft. Theft where a thief is caught with the property in his possession.

Furtum non est ubi initium habet detentionis per dominium rei /fártəm nón èst yúwbay ənìsh(iy)əm héybət dətənsiyównəs pər dəmin(i)yəm ríyay/. There is no theft where the foundation of the detention is based upon ownership of the thing.

Furtum oblatum /fártəm əbléydəm/. In the civil law, offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called "oblatum" when a thing stolen is offered to you by any one, and found upon you.

Fuse plug levees. Under Mississippi Flood Control Act lower points for possible flood spillways were designated "fuse plug levees." U. S. v. Sponenbarger, Ark., 308 U.S. 256, 60 S.Ct. 225, 227, 84 L.Ed. 230.

Fust. See Fuz.

Fustigatio /fəstəgéysh(iy)ow/. In old English law, a beating with stick or clubs; one of the ancient kinds of punishment of malefactors.

Fustis /fəstəs/. In old English law, a staff, used in making livery of seisin.

A baton, club, or cudgel.

Futhwite, or fithwite. A fine for fighting or breaking the peace.

Future acquired property. See After acquired property.

Future advance clause. A clause in an open-end mortgage or deed of trust which allows the borrower to borrow additional sums at a future time, secured under the same instrument and by the same real property security.

Future advances. Money lent after a security interest has attached and secured by the original security agreement. U.C.C. § 9-204(5). See also Further advance.

Future damages. See Damages.

Future earnings. Earnings which, if it had not been for injury, could have been made in future, but which were lost as result of injury. Nowlin v. Kansas City Public Service Co., Mo.App., 58 S.W.2d 324.

Future estate. See Estate.

Future goods. Goods which are not both existing and identified. A purported present sale of such goods operates as a contract to sell. U.C.C. § 2-105(2).

Future interests. Interests in real or personal property, a gift or trust, or other things in which the privilege of possession or of enjoyment is in the future and not present. Commissioner of Internal Revenue v. Wells, C.C.A.6, 132 F.2d 405, 407. An interest that will come into being at some future point in time. It is distinguished from a present interest which is already in existence. Assume, for example, that D transfers securities to a newly created trust. Under the terms of the trust instrument, income from the securities is to be paid each year to W for her life, with the securities passing to S upon W's death. W has a present interest in the trust since she is currently entitled to receive the income from the securities. S has a future interest since he must wait for W's death to benefit from the trust.

Future performance. In contracts, execution which is due in the future; deferred performance.

Futures contract. A present right to receive at a future date a specific quantity of a given commodity for a fixed price. Clayton Brokerage Co. of St. Louis, Inc. v. Mouer, Tex.Civ.App., 520 S.W.2d 802, 804. Commodity futures contracts are commitments to buy or sell commodities at a specified time and place in the future. The price is established when the contract is made in open auction on a futures exchange. Only a small percentage of futures trading actually leads to delivery of a commodity, for a contract may change hands or be liquidated before the delivery date. Participants fall into two categories: commercial hedgers who use futures to minimize price risks inherent in their marketing operations and speculators who, employing venture capital, seek profits through price changes. Both purchase contracts with only a small margin payment. Futures prices are

an indication of the direction of prices based on current market conditions. Such exchanges and transactions are regulated by the federal Commodity Futures Trading Commission. *See also* Option.

Currency futures contract. Futures contracts that allow one to purchase or sell a specified currency at a specified price on a specified settlement date.

Futures market. Commodity exchanges where futures contracts are traded (*e.g.*, Chicago Board of Trade).

Futures trading. The buying and selling of futures contracts, usually on commodity exchanges. *See* Futures contract.

Future value (or terminal value). The value at some future point in time of a present amount of money, or a series of payments, evaluated at the appropriate interest (growth) rate.

Futuri /f(y)stýráy/. Lat. Those who are to be. Part of the commencement of old deeds. "*Sciánt præsentés et futuri, quod ego talis, dedi et concessi,*" etc. (Let all men now living and to come know that I, A. B., have, etc.).

Fuz, or fust /fást/. A Celtic word, meaning a wood or forest.

F.W.C. Free Woman of Color. Up to the time of Civil War, term applied to all persons not of the white race, including Indians.

Fyhtwite /fáytwæt/. One of the fines incurred for homicide.

Fynderinga. (Sax.) An offense or trespass for which the fine or compensation was reserved to the king's pleasure. Its nature is not known.

Fyrd /fárd/. Sax. In Anglo-Saxon law, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*. (Also spelled "ferd" and "fird.")

Fyrdfare /fárdfêr/. A summoning forth to join a military expedition; a summons to join the *fyrd* or army.

Fyrdsočne or fyrdsoken /fárdsočwæn/. Exemption from military duty; exemption from service in the *fyrd*.

Fyrdwite /fárdwæt/. A fine imposed for neglecting to join the *fyrd* when summoned. Also a fine imposed for murder committed in the army; also an acquittance of such fine.